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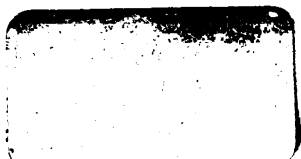


FROM THE BEQUEST OF  
CHARLES SUMNER

CLASS OF 1830

*Senator from Massachusetts*

FOR BOOKS RELATING TO  
POLITICS AND FINE ARTS



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C. M. FRENCH INSTITUTE, ETC.

AUTHOR OF "POLITICAL ETHICS," "PRINCIPLES OF LEGAL AND POLITICAL INTERPRETATION,"  
"ESSAYS ON LABOR AND PROPERTY;" "ON CRIMINAL LAW;" "REMINISCENCES OF  
NABEUER;" EDITOR OF "PENITENTIARY SYSTEM IN THE UNITED STATES  
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IN TWO VOLUMES.

VOL. II.

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1874, April 28.

Bequest of  
Hon. John Sumner,

of Boston. (H. 76 1832)

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## CHAPTER XXVII.

### EFFECTS AND USES OF INSTITUTIONAL SELF-GOVERNMENT.

IN order fully to appreciate institutional self-government, and not unconsciously to enjoy its blessings, as most of us enjoy the breath of life without reflecting on the organ of respiration and the atmosphere we inhale, it is necessary to present to our minds clearly and repeatedly, as we pass through life and read the past, what effects it produces on the individual, on society, and on whole periods, and how it acts far beyond the limits of its own country.

The advantages of institutional liberty and organized self-government, diffused over a whole country or state, and penetrating with its quickening power all the branches of government, may be briefly summed up in the following way.

Institutional self-government trains the mind and nourishes the character for a dependence upon law and a habit of liberty, as well as of a law-abiding acknowledgment of authority. It educates for freedom. It cultivates civil dignity in all the partakers, and teaches to respect the rights of others. It has

thus a gentlemanly character. It brings home palpable liberty to all, and gives a consciousness of freedom, rights and corresponding obligations such as no other system does. It is the only self-government which is a real government *of* self, as well as *by* self, and indeed is the only real self-government, of which all other governments assuming the name of self-government are but semblances, because they are at most the unrestricted rule of accidentally dominating parties, which do not even necessarily consist of the majorities. For it is a truth that that which is called the majority in uninstitutional countries, which struggle nevertheless for liberty, is generally a minority, and often even a small minority.

Institutional self-government incarnates, if the expression may pass, the idea of a free country, and makes it palpable, as the jury is nobly called the country for the prisoner. It seems that as long as institutions exist in full vigor, and no actual revolution takes place, that odious and very stale part of a successful general who uses the wreaths he has gained abroad to stifle liberty at home is unknown. Rome had her Syllas and Marius, with their long line of successors, only from the time when the institutional character of Rome had begun to fade. A French writer of ability<sup>1</sup> mentions it, as a fact worthy of note, that the duke of Wellington never carried his ambition higher than that of a distinguished subject, although Napoleon expected that he would; and general Scott, in his account of the offer which was

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<sup>1</sup> Mr. Lemoisne, Wellington from a French Point of View.

made to him in Mexico, to take the reins of that country into his own hands, and rule it with his army, mentions twice the love of his country's institutions, which induced him to decline a ruler's chaplet.<sup>2</sup>

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<sup>2</sup> General Scott has given an account of this remarkable affair in some remarks he made at a public dinner at Sandusky, in the year 1852. The generals of most countries would probably charge the victorious general with *nécessité*, for declining so tempting an offer. We delight in the dutiful and plain citizen who did not hesitate, and as the occurrence possesses historical importance, the entire statement of the general is here given. I have it in my power to say, from the best information, that the following account is "substantially correct," and as authentic as reports of speeches can well be made:

"My friend," said general Scott, "has adverted to the proposition seen floating about in the newspapers. I have nowhere seen it correctly stated that an offer was made to me to remain in that country and govern it. The impression which generally prevails, that the proposition emanated from congress, is an erroneous one. The overture was made to me privately, by men in and out of office, of great influence—five of whom, of enormous wealth, offered to place the *bonus* of one million of dollars (mentioned below) to my credit in any bank I might name, either in New York or London. On taking possession of the city of Mexico, our system of government and police was established, which, as the inhabitants themselves confessed, gave security—for the first time perfect and absolute security—to person and property. About two-fifths of all the branches of government, including nearly a majority of the members of congress and the executive, were quite desirous of having that country annexed to ours. They knew that, upon the ratification of the treaty of peace, nineteen out of twenty of the persons belonging to the American army would stand disbanded, and would be absolutely free from all obligations to remain in the army another moment. It was entirely true of all the new regiments called regulars, of all the volunteers, and eight out of ten of the rank and file of the old regiments. Thirty-three and a third per cent. were to be added to the pay of the American officers and men retained as the nucleus of the Mexican army. When the war

Institutional self-government is of great importance regarding the obedience of the citizen.

Obedience is one of the elements of all society, and consequently of the state. Without it, political

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was over, the government overwhelmed me with reinforcements, after there was no possibility of fighting another battle. When the war commenced, we had but one-fourth of the force which we needed. The Mexicans knew that the men in my army would be entitled to their discharge. They supposed, if they could obtain my services, I would retain these twelve or fifteen thousand men, and that I could easily obtain one hundred thousand men from home. The hope was, that it would immediately cause annexation. They offered me one million of dollars as a bonus, with a salary of \$250,000 per annum, and five responsible individuals to become security. They expected that annexation would be brought about in a few years, or, if not, that I could organize the finances, and straighten the complex affairs of that government. It was understood that nearly a majority of congress was in favor of annexation, and that it was only necessary to publish a pronunciamiento to secure the object. We possessed all the fortresses, all the arms of the country, their cannon foundries and powder manufactories, and had possession of their ports of entry, and might easily have held them in our possession if this arrangement had gone into effect. A published pronunciamiento would have brought congress right over to us, and, with these fifteen thousand Americans holding the fortresses of the country, all Mexico could not have disturbed us. We might have been there to this day, if it had been necessary. I loved my distant home. I was not in favor of the annexation of Mexico to my own country. Mexico has about eight millions of inhabitants, and out of these eight millions there are not more than one million who are of pure European blood. The Indians and mixed races constitute about seven millions. They are exceedingly inferior to our own. As a lover of my country, I was opposed to mixing up that race with our own. This was the first objection, on my part, to this proposition. May I plead some little love of home, which gave me the preference for the soil of my own country and its institutions? I came back to die under those institutions, and here I am. I believe I have no more to add in reply."

society cannot hold together. This is plain to every one. Yet there exists this great distinction, that there may be obedience, demanded on the sole ground of authority; such is the obedience expected by the parent. The authority of the parent comes from a source not within the circle of the obeyers. And there may be obedience, which has its very source within the circle of the obeyers. Such is the source of obedience due to authority in that society the component members of which live in jural relations—in one word, in the state. The freeman obeys, not because the government exists before the people and makes them, but because man is a being destined to live in a political state, because he must have laws and a government. It is his privilege, and one of the distinctions from the brute creation. Yet, the government existing as a consequence of the jural nature of society and of man, it is unworthy of a freeman to obey any individual as individual, to follow his commands merely because issued by him, while the citizen of a free country acknowledges it as a prerogative to obey laws.

The obedience of a loyal free citizen is an act of self-directing compliance with a rule of action; and it becomes a triumph of reason and freedom when self-directing obedience is thus paid to laws which the obeyer considers erroneous, yet knows to be the laws of the land, rules of action legitimately prescribed by a body of which he forms a constituent part. This noble attribute of man is never politically developed except by institutions. To obey institutions of self-government has nothing galling

in it on the ground of submission. We do not obey a person whom as individual we know to be no more than ourselves, but we obey the institution of which we know ourselves to be as integral a part as the superior, clothed with authority. The religious duty of obeying for conscience sake is not excluded from this obedience. On the contrary, it forms an important element. The term "law-abiding people" could never have become so favorite an expression with us, and be inscribed even on the banners of some who defy the law, were we not an institutional people under the authority of institutional self-government.

Rulers over twenty millions of people, like our presidents, could not be easily changed, without shock or convulsion, were not the twenty millions trained by institutional self-government, were not the ousted minority conscious that, in the spontaneous act of submitting, they obey an institution of which they form as important a part as the ruling party, and did not their own obedience foreshadow the obedience which the others must yield, when their turn comes. The "principle of authority" has become for the time being as popular, at least as often repeated a phrase in France, as "abiding by the law" is with us. Pamphlets are written on it, the journals descant on it. If the object of these writings is to prove that there must be authority where there is society, it would prove that the writers must consider the opinion of some communists, that all government is to be done away with, far more serious and disseminated than people at a distance can believe, to whom such absurdity appears as a mere paper and opposi-

tion fanaticism. If, however, all those discourses are intended to establish the principle of authority in politics as an independent principle, such for instance as it is maintained in the catholic church, because its institutor is far above it, and has given divine commandments, it would only show that the ruling party plainly desire absolutism.<sup>3</sup>

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<sup>3</sup> There is no doubt in my mind that the institutional government is the real school of civil obedience. Whether the following remarkable passage, which I found in baron Müffling's *Memoirs of the Campaign of 1813 and 1814*, edited by Col. Philip Yorke, London, 1868, must be in part explained by the general self-government of England, and the fact that every English gentleman is accustomed to political self-government and consequently to obedience, I shall not decide, but I strongly incline to believe that we must do so. General Müffling was the Prussian officer in the staff of the duke of Wellington, who served as an official link between the two armies. He was, therefore, in constant personal intercourse with the English commander, and had the very best opportunity of observing that which he reports.

"I observed," says general Müffling, "that the duke exercised far greater power in the army he commanded than prince Blücher in the one committed to his care. The rules of the English service permitted the duke's suspending any officer and sending him back to England. The duke had used this power during the war in Spain, when disobedience showed itself among the higher officers. Sir Robert Wilson was an instance of this.

"Amongst all the generals, from the leaders of corps to the commanders of brigades, not one was to be found in the active army who had been known as refractory.

"It was not the custom in this army to criticize or control the commander-in-chief. Discipline was strictly enforced; every one knew his rights and his duties. The duke, in matters of service, was very short and decided. He allowed questions, but dismissed all such as were unnecessary. His detractors have accused him of being inclined to encroach on the functions of others—a charge which is at variance with my experience."



Institutional self-government distinguishes itself above all others for tenacity and a formative, assimilative and transmissible character.

Its tenacity is shown by the surviving of many institutions even in the most violent changes, although their characters may be but very partially self-governing ones. In no period is this truth more strikingly illustrated than in the conquest of the Roman empire by the Northern races. The Goth sword took lands and scaled towns, but it could not scale institutions, and Theodoric rather assimilated his Germanic hosts to the remnants of Roman institutions than the Italians to the conquerors. It has been so wherever the conqueror met with institutions and did not in turn oppose institutions of his own, as, in a great measure, the Visigoths did in Spain. The military despotism which swept over the whole continent of Europe left England unscathed even in spite of Cromwell's military and organized absolutism, the institutions survived Cromwell's vigor and Charles's prostitution of England.

Mr. Macaulay says that upon the whole it was probably better that the English allowed Charles the Second to return without insisting upon distinct and written guarantees of their liberties. This may be a disputable point, for we see that the English were after all obliged to resort to them in the Declaration of Rights and Settlement; but it will hardly be disputed that the reigns of Charles the Second and James the Second would have been fatal to England had she not been eminently institutional in her character.

The tenacious life of institutional liberty is shown perhaps greatest in times of political mediocrity and material well-being. Gloomy, or ardent, and bold times may try men's souls, but periods of material prosperity and public depression try a country's institutions. They are the most difficult times, and liberty is lost at least as often by stranding on pleasant shores as by wrecking on boiling breakers.

The formative character of institutional self-government is shown in such cases as the formation of the Oregon government, as has been mentioned before. So does the extensive British empire in the East show the formative and vital character of self-government. No absolute government could have established or held such an empire at such a distance, and yet an absolute ruler would consider it indicative of feebleness and not of strength in a government, that a board of shareholders can recall a governor-general, and a man like sir Robert Peel, as premier, could acquiesce in it.

Even the Liberians may be mentioned here. People who, while with us, belonged to a degraded class, many of whom were actual slaves, and the rest socially unfree, nevertheless have carried with them an amount of institutionalism which had percolated even down to them; and a government has been established which enjoys internal peace, and seems to grow in strength and character every day, at the same time that hundreds of attempts in Europe have sadly miscarried. And, again, people of the same race, but having originally lived under a government without the element of institutional self-rule—the

inhabitants of St. Domingo—resemble their former masters in the rapid succession of different governments destitute of self-government and peace.

The words of Mr. Everett are doubtless true, that “the French, though excelling all other nations the world in the art of communicating for temporary purposes with savage tribes, seem, still more than the Spaniards, to be destitute of the august skill required to found new states. I do not know that there is such a thing in the world as a colony France growing up into a prosperous commonwealth. A half a million of French peasants in Lower Canada tenaciously adhering to the manners and customs which their fathers brought from Normandy two centuries ago, and a third part of that number planters of French descent in Louisiana, are all that is left to bear living witness to the amazing fact that not a century ago France was the mistress of the better half of North America.”<sup>4</sup> Are they succeeding in establishing a vigorous colony in Algeria? It seems not; and the question presents itself, what is the reason of this inability of so intelligent a nation as the French are to establish flourishing colonies? I believe there is no other answer than this: The French are thoroughly wedded to centralism, and eminently uninstitutional in their character. They do not know self-government; they cannot impart it. Every Frenchman’s mental home is Paris, even in France; as to a colonial life, he always considers it a mere exile.

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<sup>4</sup> Mr. Everett’s Address before the New York Historical Society, 1853.

The assimilative power and transmissible character of the institution are closely connected with its tenacity and formative character. Few things in all history seem to me more striking; and, if analyzed, more instructive than the fact that Great Britain, though monarchical in name, and aristocratic in many points, plants freedom wherever she sends colonies, and becomes thus the great mother of republics; while France, with all her democratic tendencies, her worship of equality and repeated proclamations of a republic, has never approached nearer to the republic than setting aside a ruling dynasty; her colonies are, politically speaking, barren dependencies. They do not bloom into empires. The colonies of Spain also teach a grave lesson on this subject.<sup>5</sup>

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<sup>5</sup> The reader has a right to ask here, why then did not the Netherlands, so institutional in their character, establish prosperous self-governments in foreign parts, as England did? I believe the answer which must be given is this:

The Netherlands lacked at home a protecting national government proper—one that could furnish them with a type of a comprehensive yet popular general government. The Netherlandish colonies always remained mere dependencies upon the executive. The Netherlands did not plant colonial legislatures.

The Netherlands, moreover, had lapsed into a state of sejunction. The idea of their petty sovereignty was carried to the most ruinous extreme. The Greeks colonized, indeed, by dotting as it were foreign parts. The shores of the Mediterranean were sprinkled with Greek and Phœnician colonies corresponding to the ancient city-states—from which they had branched off. But a Netherlandish town could not thus have established a little colony in Java or the West Indies.

Lastly, I believe the Netherlands did not become the disseminators of self-government, although institutional in their character, because they had no living common law to take with them, as the

The power by which institutional self-government assimilates different and originally discordant elements is forcibly shown in the United States, where every year several hundred thousand immigrants arrive from different countries accustomed to different governments. The institutions of our country soon absorb and assimilate them as integral parts of our polity. In no other political system could this be done. Such additions could not even be allowed. Let an influx of foreigners take place in a country like France when she called herself republican, and the danger of so large a body of foreigners would soon be perceived. It would be an evil day indeed for the United States and for the emigrants when our institutions should be broken up and popular absolutism were to be erected on the ruins of our institutional liberty. We, of all nations on earth, are most interested in the vigorous life and healthful development of institutional self-government. No nation has so much reason to shun mere inarticulated equality and barren centralization as ourselves.

On the other hand, it may be observed that the

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talent of the mother country. They had the learned civil law—at least sufficient of it to stifle farther development of common law. We know already that the Roman law, however excellent some of its principles are, is void of the element of self-government, and, because superinduced, antagonistic to self-development of law.

Nevertheless, it is a question of interest to Americans, whether and how far the first settlers of New England were influenced by their sojourn in the republican Netherlands. I throw out the question. It deserves a thorough yet very plain and unbiased inquiry.

Turks to this day are very little more than they were on the day of their conquest—isolated rulers, unassimilated and unassimilating, having for centuries been in possession of the finest country in Europe, whence in the fifteenth century our civilization was kindled again. Yet so unidentified are the Turks with the country or its population that the idea of their expulsion from Europe has nothing strange in it, or difficult to imagine. The reasons cannot lie in their race, for they are no longer Mongolians; it cannot lie in their religion, for Mohammedans have flourished; they have no political institutions, carrying life and action within them, nor did they find institutions, which might have absorbed them. The Byzantine empire had become a mere court government long before the Turks conquered it, and the worst court government that ever existed in Europe.

The stability obtained by an institutional government is closely connected with the tenacity which has been mentioned; but it is necessary to observe that an institutional self-government seems to be the only one which unites the two necessary elements of continuity and progression, or applicability to changing conditions. Asia, with its retrospective and traditional character, and without political mutations proper, offers the sight of stagnation. France, with her ardently prospective and intellectual character, but without political institutions proper, lacks continuity and political development. There is a succession of violent changes, which made Napoleon the First exclaim, observing the fact but not perceiving the cause, "Poor nations! in spite of all

your enlightening men,<sup>6</sup> of all your wisdom, you remain subject to the caprices of fashion like individuals." Now, it is pre-eminently the institutional self-government which prevents the rule of political fashion, because, on the one hand, it furnishes a proper organism by which public opinion is elaborated and may be distinguished from mere transitory general opinion,<sup>7</sup> from acclamation or panic; and, on the other hand, it seems to be the only government strong enough to resist momentary excitement and a sweeping turn of the popular mind. Absolute popular governments are liable to be seized upon by every change of general passion or desire, an absolute concentrated absolutism is as much exposed to changes and fashions. The difference is only that single men—ministers or the rulers—may effect the sudden changes according to views which may happen to prevail. The English government with all its essential changes and reforms, and the

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<sup>6</sup> The words reported to have been used by Napoleon is *Lumière* which may mean enlighteners and enlightenment. The passage found in the *Mémorial de Sainte-Hélène*, by Las Cases. Napoleon was speaking of the clergy, and the whole passage runs thus:

"Je ne fais rien pour le clergé qu'il ne me donne de suite sujet de m'en repentir, disait Napoléon; peut-être qu'après moi viendront d'autres principes. Peut-être verra-t-on en France une conscription de prêtres et de religieuses, comme on y voyait de nos jours une conscription militaire. Peut-être mes casernes deviendront-elles des couvents et des séminaires. Ainsi va le monde. Pauvres nations! en dépit de toutes vos lumières, de toute votre sagesse, vous demeurerez soumises aux caprices de la mode comme de simples individus."

<sup>7</sup> Public Opinion and General Opinion have been discussed in the first volume of *Political Ethics*.

lead it has taken in many of the latter, during this century, compared to the chief governments of the European continent, has proved itself stable and continuous in the same degree in which it is popular and institutional, compared to them. - The history of a people, longing for liberty but destitute of institutional self-government, will always present a succession of alternating tonic and clonic spasms. Many of the Italian cities in the middle ages furnish us with additional and impressive examples.

Liberty is a thing that grows, and institutions are its very garden beds. There is no liberty in existence which as a national blessing has leaped into existence in full armor like Minerva from the head of Jove. Liberty is *crescive* in its nature. It takes time, and is difficult, like all noble things. Things noble are hard,<sup>8</sup> was the favorite saying of Socrates, and liberty is the noblest of all things. It must be tended, defended, developed, conquered and bled for. It can never be added, like a mere capital on a column; it cannot be put on to a foreign body. If the emperor of China were to promulgate one of the charters of our states for his empire, it would be like hanging a gold collar around the neck of a camel.

Liberty must grow up with the whole system; therefore we must begin at once, where it does not exist, knowing that it will take time for perfection, and not indeed discard it, because it has not been commenced yet. That would be like discarding the

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<sup>8</sup> χαλεπὰ τὰ καλὰ. This was one of the favorite sayings of Socrates. May we not add καὶ καλὰ τὰ χαλεπὰ?



preparation of a meal, because it has not been commenced in time. Let institutions grow, and so them at once.

We see, then, how unphilosophical were the words of the present emperor of the French to the assembled bodies of state in February, 1853, when said: "Liberty has never aided in founding a durable edifice; liberty crowns it when it has been consolidated by time."

History denies it; political philosophy gains it; common sense contradicts it. Liberty may be planted where despotism has reigned, but it can be done only by much undoing, and breaking down by a great deal of rough ploughing. You can prepare for liberty by centralized despotism, more than you can prepare for light by darkness and destroying the means of light or vision.

## CHAPTER XXVIII.

DANGERS AND INCONVENIENCES OF INSTITUTIONAL  
SELF-GOVERNMENT.

INSTITUTIONAL self-government has its dangers and inconveniences, as all human things have, and its success requires the three elements necessary for all true success of human action—common sense, virtue and wisdom; but its danger is not that alone which warns us from the ancient saying: Divide and rule. *Divide et impera* is true indeed, but it is equally true: Concentrate and rule, as history and our own times abundantly prove.

It has been stated that nothing is more common than governments, which, fearing the united action of the nation, yet being obliged to yield in some manner to the demand for liberty, try to evade the demand and to deceive the people by granting provincial representations or estates. In these cases division is indeed resorted to for the greater chance of ruling the people, partly because separate, they are weak, and one may be played off against the other, as the marines and sailors neutralize one another on board the men-of-war. In no period probably has this conduct of continental governments

more strikingly shown itself than in that which began with the downfall of Napoleon, and ended with the year 1848. But it must not be forgotten that by institutional self-government a polity has been designated that comprehends institutions of self-government for all the regions of the political actions of a society, and it includes the general and national self-government as well as the minute local self-government.

The self-government of a society, be this a township or a nation, must always be adequate to its highest executive; and when any branch is national, all the three branches must be national. The very nature of civil liberty, as we have found it, demands it. They must work abreast, like the horses of the Grecian chariot, public opinion being the charioteer. Had England, as she has now, a general executive, but not, as now, a general parliament, the self-government of the shires and towns, of courts and companies, would soon be extinguished. Had we a president of the United States and no national legislature, it is evident that either the president would be useless, and there would be no united country, or if the executive had power, there would be an end to the state self-governments, even if the president were to remain elective. Liberty requires union of the whole, whatever this whole, or *Koinon* as the Greeks styled it, may be, as has been already mentioned. Wisdom, practice, political forbearance and manly independence can alone decide the proper degree of union, and the necessary balance.

One of the dangers of a strongly institutional

self-government is that the tendency of localizing may prevail over the equally necessary principle of union, and that thus a disintegrating sejunction may take place, which history shows as a warning example in the United States of the Netherlands. I do not allude to their Pact of Utrecht, which furnished an inadequate government for the confederacy, and upon which the framers of our federal constitution so signally improved, after having tried a copy of it in the articles of the confederation. I rather speak of the Netherlandish principle, according to which every limited circle and even most towns did not only enjoy self-government, but were sovereign, and to each of which the stadtholder was obliged to take a separate oath of fidelity. The Netherlands presented the very opposite extreme of French centralism. The consequence has been that the real Netherlandish greatness lasted but a century, and in this respect may almost be compared to the brevity of Portuguese grandeur, though it resulted from the opposite cause.

The former constitution of Hungary, according to which each comitate had the right to vote, whether it would accept or not the law passed by the diet,<sup>1</sup> is an instance of the ruinous effect of purely partial self-government. The nation, as nation, must participate in the self-government; and Hungary lost her liberty as Spain and all countries have done, which have disregarded this part of self-government.

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<sup>1</sup> The author of the famous Oceana proposed a similar measure for England, as St. Just, "the most advanced" follower of Robespierre, did for France.

Another danger is that with reference to the domestic government, the local self-government may impede measures of a general character. Instances and periods of long duration occur, which serve as serious and sometimes as alarming commentaries on the universal adage, that that which is everybody's business is no one's business. The roads, considered by the Romans so important that the road-law found a place on the twelve tables, and sanitary regulations frequently suffer in this way. The governments of some of our largest cities furnish us with partial yet striking illustrations.

It might be added that one of the dangers of this government lies in this, that the importance of the institutional character may be forgotten, that their limitations may be considered as fetters, and that thus the people may come to forget that part of self-government which relates to the being governed, and only remember that part which consists in their governing. If this takes place, popular absolutism begins, and one part rules supreme over the other.

We reply to these objections that it is a characteristic of absolutism that it believes men can be happily ruled by formulas and systems alone. The scholar of liberty knows that important as systems and institutions, principles and bills of rights are, they still demand rational and moral beings, for which they are intended, like the revelation itself, which is for conscious man alone. Everything in this world has its dangers. In this lies the fearful responsibility of demagogues. "Take power, bear

down limitation," is their call on the people, as it was the call of the courtiers on Louis the Fourteenth. Their advice resembles in politics that which is given on the tomb of Sardanapalus, regarding bodily intemperance: "Eat, drink and lust; the rest is nothing."<sup>2</sup>

We must the more energetically cling to our institutional government, and the more attentively avoid extremes. At the same time the question is fair whether other systems either avoid the danger or do not substitute greater evils for it; and, lastly, we must in this, as in all other cases, while honestly endeavoring to remedy or prevent evil, have an eye to the whole and see which yields the fairest results. Nothing, moreover, is more dangerous than to take single brilliant facts as representatives of systems. They prove general soundness as little as brilliant deeds necessarily prove their morality.

It is these dangers that give so great a value to constitutions, if conceived in the spirit of liberty. The office of a good constitution, besides that of pronouncing and guaranteeing the rights of the citizen, is that, as a fundamental law of the state, it so defines and limits the chief powers, that, each moving in its own orb, without jostling the others, it prevents jarring and grants harmonious protection to all the minor powers of the state.

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<sup>2</sup> "The epitaph inscribed upon the tomb of Sardanapalus, 'Sardanapalus, the son of Anacyndaraxos, built Anchiola and Tarsos in one day: eat, drink and lust; the rest is nothing,' has been quoted for ages, and its antiquity is generally admitted." Layard's *Nineveh*, vol. ii. p. 478.

A constitution, whether it be an accumulative one, as that of Great Britain, or an enacted one, as ours is, is always of great importance, as indeed all law is important wherever there is human action; but, from what has been stated, it will be readily perceived that constitutions are efficient toward the obtaining of their main ends, the liberty of the citizen, only in the same degree as they themselves consist of an aggregate of institutions; as, for instance, that of the United States consists of a distinct number of clearly devised and limited, as well as life-possessing institutions, or as that of England, which consists of the aggregate of institutions considered by him who uses the term British Constitution as of fundamental and vital importance. It will, moreover, have appeared that these constitutions have a real being only if founded upon numerous wide-spread institutions, and feeding, as it were, upon a general institutional spirit. Without this, they will be little more than parchment; and, important as our constitutions are, it has already been seen that the institution of the Common Law, on which all of them are based, is still more important. It cannot be denied that occasional jarring takes place in a strongly institutional government. It is, as we have called it, of a co-operative character, and all co-operation may lead to conflict. There is, however, occasional jarring of interests or powers, wherever there are general rules of action. This jarring of laws, and especially of institutions, so much dreaded by the absolutists, whose beau ideal is uncompromising and unrelieved uniformity, is very frequently the means

of development, and of that average justice which constitutes a feature of all civil liberty. If there be anything instructive in the history of free nations, and of high interest to the student of civil liberty, it is these very conflicts, and the mean which has resulted from it. It must also be remembered that liberty is life, and life is often strife, in the social region as in that of nature. If, at times, institutions lead to real struggles, we have to decide between all the good of institutional liberty with this occasional inconvenience, and absolutism with all its evils and this occasional avoidance of conflicting interests. More than occasional this avoidance, even under an absolutism, cannot be called. What domestic conflicts have there not been in the history of Russia and Turkey!

The institution unquestionably partly results from, and in turn promotes, respect for that which has been established or grown. This leads occasionally to a love of effete institutions, even to fanaticism; but fanaticism which consists in carrying a truth or principle to undue length, irrespective of other truths and principles, equally important, besets man in all spheres. Has absolutism not its own bigotry and fanaticism?<sup>3</sup>

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<sup>3</sup> I have expressed my view on this subject in an address to a graduating class. I copy the passage here, because I believe the truth it contains important:

"Remember how often I have endeavored to impress upon your minds the truth, that there is no great and working idea in history, no impulse which passes on through whole masses, like a heaving wave over the sea, no yearning and endeavor which gives a marking



When an institution has become effete; when nothing but the form is left; when its life is fled—in one word, when the hull of an institution remains but when it has ceased to be a real institution, it is inconvenient, dangerous, or it may become seriously injurious. Nothing, indeed, is so convenient for despotism, as I stated before, than the remaining forms of an obsolete freedom, or forms of freedom pur-

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character to a period, and no new institution or new truth, which becomes the substantial addition that a certain age adds to the stock of progressive civilization—that has not its own caricature and distorted reflection along with it. No Luther rises with heroic purpose, without being caricatured in a Carlstadt. The miracle wrought by Him, to whom it was no miracle, is mimicked in toyish marvels for easy minds. The communists are to the dignity of labor what the hideous anabaptists were to the reformation, or tyrannical hypocrites in England to the idea of British liberty in a Pym or Hampden. There was a truth of elementary importance conveyed in the saying of former ages, however irreverent it may appear to our taste, that Satan is the mimicking and grimacing clown of the Lord. I will go farther, and say, that no great truth can be said to have fairly begun to work itself into practice, and to produce, like a vernal breath, a new growth of things, if we do not observe somewhere this historic caricature. Has christianity itself fared better? Was the first idea, which through a series of errors led to the anchorites and pillar saints, not a true and holy one? Does not all fanaticism consist in recklessly carrying a true idea to an extreme, irrespective of other equally true ones, which ought to be developed conjointly, and under the salutary influence of mutual modification? There is truth in the first idea whence the communist starts, as much so as there is truth in the idea which serves as a starting-post for the advocate of the ungodly theory of divine right; but both carry out their fundamental principle to madness, and, ultimately, often run a muck in sanguinary ferocity. Do not allow yourself, then, to be misled by these distortions, or to be driven into hopeless timidity, which would end in utter irresolution, and a misconception of the firmest truths."

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posely invented to deceive. A nobility stripped of all independence, and being nothing but a set of court retainers, the Roman senate under the emperors, the court of peers under Henry the Eighth, representative houses without power or free action, courts-martial dictated to by a despot, elections without freedom, are tremendous engines of iniquity. They bear the responsibility, without free agency. They are in practice what syllogism is without truthfulness. But this is no reproach to the institution in general, nor any reason why we ought not to rely upon it. Many an old church has served as a den for robbers. Shall we build no churches? If the institution is effete, let it be destroyed, but do it, as Montesquieu says of laws in general, "with a trembling hand," lest you destroy what only appeared to your onesided view as effete. Still more vigorously must the battering-ram be directed against institutions which from the beginning have been bad, or which plainly are hostile to a new state of things. There are institutions as inconsistent with the true aim of society, though few are as monstrous, as the regularly incorporated prostitutes of ancient Geneva were. They must be razed. All historical development contains conservatism, progress and revolution, as christianity itself is most conservative and most revolutionary. The vital question is, *when?* And from all that has been stated, it must have appeared that the institution greatly aids in the best progress of which society is capable, that which consists in organic changes, changes which lie in the very principles of continuity and conservatism themselves.

There are no countries on the European continent where such constant and vast changes are going on, in spite of all their outer revolutions, as in the United States and in England, for the very reason that they are institutional governments—that there exists self-government with them; yet they move within their institutions. This truth is symbolically exemplified in Westminster Abbey and the Champ de Mars. Century after century the former has stood, and what course of historical development has flowed through it! What representative festivities, on the other hand, from the feast of the Universal Federation of France in 1790 to the distribution of eagles to the army in May 1852, have succeeded each other on the latter—revolutionary, conventional, republican, imperial, royal, imperial-restorational, again Bourbonian, Orleanistic, socialistic, and uncrowned-imperialist and imperial—yet centralism has worked its steady dis-individualizing way through all.<sup>4</sup> There are “sermons in stones,” and sermons in places.

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<sup>4</sup> The following is taken from a late French paper. It is of sufficient symbolic interest to find a place in a note:

In 1790, on the 14th of July, the anniversary of the taking of the Bastille was celebrated by what was called the *Fête of the Universal Federation of France*. Delegations were sent to it by every department, city, town, and village in the country, all eager to manifest their enthusiasm for the revolution of 1789. Every hundred of the National Guards was represented by six members; and there were also six deputies from every regiment of infantry, and four for every regiment of cavalry. These “confederates,” as they were styled, were all entertained by the inhabitants of Paris, who are said to have rivalled each other in hospitality. In order to afford facilities to the immense number of spectators who were expected

on the *Champ-de-Mars*, over twelve thousand workmen were employed to surround it with embankments. Fears, however, being still entertained that the work would not be completed in time, all Paris turned out to assist. Men, women, and children, the National guard, priests even, and sisters of charity, all took part in it. The Abbe Sieyes and Viscount Beauharnais were seen tugging together at the same wheelbarrow. At the entrance to the field was erected an immense triumphal arch; while in the centre was raised an altar, called the *Altar of the Country*, at which officiated Talleyrand, then Bishop of Autun. A bridge of boats was stretched across the Seine, near the *Champ-de-Mars*, where since has been erected the bridge of Jena.

In 1791, on the 18th of September, there was a splendid *Fête* for the publication of the Constitution, and for receiving the oath of fidelity to it from Louis XVI.

In 1792, on the 15th of April, the *Fête of Liberty* was celebrated. The centre of attraction was an enormous car, in which was placed a statue of Liberty, holding a liberty-cap in one hand and in the other a club. To such an extent was the principle of freedom carried on this occasion that there was not a single policeman present to preserve order. The master of ceremonies was armed only with an ear of corn; nevertheless, there is said to have been no disorder.

In 1793, there was a *fête* in honor of the abolition of slavery. On the 10th of August of the same year, there was a *fête* for the acceptance of the Constitution of 1793. The President of the Convention received eighty-three Commissioners from the departments; after which the registers upon which were inscribed the votes of the Primary Assemblies were brought to him, and he deposited them upon the "Altar of the Country," amid the firing of cannon, and the rejoicing of the people, who swore to defend the constitution with their lives. On the 2d December following, the *Fête of Victories* took place, in celebration of the taking of Toulon. On this occasion the *Altar of the Country* was transformed, by the poet-painter David, into a temple of immortality.

In 1794, on the 21st of January, the anniversary of the death of Louis XVI. was celebrated by all the principal authorities going to the Altar of the Country, and renewing their oath of *hatred to royalty*. On the 9th of June of the same year, the *Fête of the Su-*

*preme Being* commenced at the Tuileries, and was terminated on the *Champ de Mars*. In the centre of the plain a "Mountain" was thrown up, surmounted by an oak. On the summit of the mountain were seated the representatives of the people; while near them were a number of young men, with drawn swords in their hands, in the act of striking a symbolical figure of the "monster fanaticism."

In 1796, on the 21st January, the anniversary of the death of Louis XVI. was again celebrated. All the public functionaries renewed once more their oath of hatred to royalty; and the people spent the day singing the Marseilles Hymn, *Ca ira*, and various patriotic songs. On the 30th of March following, the *Fête of Youth* took place, on occasion of arming all the young men over sixteen years of age; and on the 30th of April, on the proposition of Carnot, the *Fête of Victories* was celebrated.

In 1798, on the 20th of March, was the *Fête of the Sovereignty of the People*. On the 10th *Vendémiaire*, there was a funeral *fête* in memory of General Hoche. On the 10th *Messidor*, the *Fête of Agriculture* took place, with a great display of chariots, cattle, fruits, &c. During the five supplementary days of the revolutionary year, there was a series of *fêtes*, with an exposition of all the products of French industry, on the *Champ-de-Mars*.

In 1801, there were *fêtes* in memory of the foundation of the Republic, and in celebration of general peace, which were attended by the First Consul.

In 1804, on the 10th of November, Napoleon, then Emperor, repaired to the *Champ-de-Mars*, and there received the oath of fidelity and obedience from deputations representing all the corps of the army.

In 1814, on the 7th of September, the government of the Restoration distributed colors to the National Guard of Paris. The object of this distribution was to efface, if possible, even the memory of the eagles of the empire, and of the tri-colored standard of the revolution. An altar glittering with gold and costly drapery was erected near the military school, and in front was placed the throne occupied by Louis XVIII., who was accompanied by the Count of Artois, the Duke of Angoulême, and the Duke of Berri. Mass was celebrated by the Archbishop of Paris, M. Talleyrand Perigord, uncle of the Bishop of Autun, who, as we have seen, officiated

at the Fête of Federation in 1790. The National Guards defiled before the Throne, while the band played *Vive Henry IV!* and *Charmante Gabrielle*.

In 1815, on the 1st of June, there was a fête in celebration of the return of the Emperor. Napoleon appeared on the throne with his three brothers. A mass was performed; the constitution was acclaimed with enthusiasm; and the air was rent with cries of *Vive Napoleon!* The oath was taken with enthusiasm. Napoleon addressed the soldiers from the throne in the following words:

"Soldiers of the National Guard of Paris; soldiers of the Imperial Guard: I confide to you the imperial eagle, with the national standard. You swear to defend it with your lives, if need be, against the enemies of the country and this throne. You swear never to rally under any other banner."

During the restoration, the *Champ-de-Mars* was used chiefly for reviews of the National Guard; the most notable of which was the last one passed by Charles X., when the citizens manifested that hostility to the king which was a prelude to the revolution of 1830.

In 1837, there was a grand fête in honor of the marriage of the Duke of Orleans, on which occasion the crowd in the *Champ-de-Mars* was so great that twenty-four persons were suffocated or crushed to death. During most of the reign of Louis Philippe, however, the principal gatherings in the *Champ-de-Mars* were on occasion of military reviews and horse-races.

In 1848, on the 22d of May, the *Fête of Concord* was celebrated with great pomp. The *Moniteur* alluded to the occasion thus:

"This solemnity was celebrated with an éclat enhanced by the magnificent weather. Under so clear a sky, and surrounded by so many joyful countenances, how was it possible to experience any feelings but those of love, conciliation and harmony? What struck us, especially, was the attitude, so full of enthusiasm and confidence, of the vast concourse of people that crowded the *Champ-de-Mars*; cries, a thousand times repeated, of *Vive la République!* *Vive la République Démocratique!* *Vive l'Assemblée Nationale!* broke out, in formidable chorus, every instant, as if to proclaim the respect of the people for the institutions which they have adopted, and their invincible repugnance to every retrograde or reactionary idea."

To this must be added the gigantic military fête on the 10th

of May 1852, called the *Fête of Eagles*, that is. the distribution of eagles to all the regiments of the army. A cock had been adopted as symbol of the first republic, owing either to misunderstanding the word Gallia, or intending to pun on it. The emperor adopted the Roman eagle; the Bourbons brought back the three fleurs de lys; and in 1880 the cock was restored. Louis Napoleon when president for ten years, restored the imperial eagle. It must be owned the cock looked very much as our turkey would have looked had we adopted Franklin's humorous proposition of selecting our native and respectable turkey, instead of our fine native eagle.

What feast will be celebrated on the same spot next? Whatever it will be, it will be again something intrinsically different from the last.

## CHAPTER XXIX.

ADVANTAGES OF INSTITUTIONAL GOVERNMENT,  
FARTHER CONSIDERED:

THERE are some additional observations suggested by the subject of institutional self-government and by that of the institution in general, which have been deferred until now in order to avoid an interruption of the general argument, and to which it is necessary to turn now our attention.

It seems to me a symptomatic fact that the term *People* has at no period, so far as I am acquainted with the inner history of England, become in politics a term of reproach, not even in her worst periods. On the contrary, the word *People* has always been surrounded with dignity, and when Chatham was called "The people's minister," it was intended by those who gave him this name as a great honor. It was far different on the continent. In French, in German and in all the continental languages with which I am acquainted, the corresponding words sank to actual terms of contempt. The word *Peuple* was used in France, before the first revolution, by the higher classes, in a disdainful and stigmatizing sense, and often as equivalent with *canaille*—that



term which played so fearful a part in the sanguinary drama of the revolution, and which Napoleon purposely used, in order emphatically to express that he was or wished to be considered the man of the people, when he said somewhat soldierly : *Je suis moi-même sorti de la canaille.*<sup>1</sup> In German, the words *Volk* and *Nation* came actually to be used as vilifying invectives, even by the lower classes themselves. These words never ceased indeed to be used in their legitimate sense, but they were vulgarly applied in the sense of which I have spoken. They acquired this ignominious sense, because the nobility, a very numerous class on the continent, looked with arrogance upon the people, and the people, looking up to the nobility with stolid admiration, aped the pride of that class. It is a universal law of degradation that it never consists simply of degradation and degradedness, but always of a chain of degraded who at the same time are or try to be in turn degraders, as oppression begets the lust of oppressing in the oppressed.

On the other hand, the English word *people* has acquired, at no time, not even during her revolution, that import of political horror, which *demos* had in the times of Cleon for the reflecting Athenian, or *Peuple* in the first French revolution. What is the cause of these remarkable facts? I can see no other than that there has always existed a high degree of institutional self-government in England—a very high degree, if we compare her to the con-

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<sup>1</sup> The dictionary of the academy gives, as the last two meanings of the word *Peuple*—unenlightened men, and men belonging to the lowest classes.

continent. The people never ceased to respect themselves; and others never ceased to feel their partial dependence upon them. The aristocracy of England, a patrician body, far more elevated than any continental nobility, still remained connected with the people, by the fact that only one of the patrician family can enjoy the peerage; this distinction does not, therefore, indicate a social status, inhering in the blood, for that runs in the whole family; but it indicates a political position.<sup>2</sup>

Possibly most of my American and English readers may not perceive the whole import of these remarks, but let them live for a considerable time on the continent of Europe, and their own observations will not fail to furnish them with commentaries as well as a full explanation of the preceding remarks.

Another subject to which I desire to direct attention is the usage, which, as it has been stated, forms an important element of the institution, and, consequently, of institutional government. This is

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<sup>2</sup> Aristocratic as England is in many respects, it is nevertheless true that there is no nobility in the continental sense. The law knows of peers, hereditary lawgivers, but it does not know even the word nobleman. The peerage is connected with primogeniture, but there is no English nobility in the blood. The idea of *matsalliance* has therefore never obtained in England. There is no doubt that the little disposition of the English shown at any time to destroy the aristocracy, is in a great measure owing to this fact, as doubtless the far more judicious spirit of the English peers to yield to the people's demands, if clearly and repeatedly pronounced, has contributed much. Mr. Hallam has very correct remarks on the subject of English equality of civil rights, where he speaks of the reign of Henry the Third.

frequently not only admitted by the absolutists, but in bad faith insisted upon. Continental servilists frequently eulogize the liberty of the English, but wind up by pointing at their institutions and their widely spread usages, observing that since these are necessary and do not exist on the continent, neither can liberty exist. It is a faithless plea for servilism. An adequate answer to this plea is this: that in no sphere can we attain a given end if we do not make a beginning, and are not prepared for partial failures during that beginning. If spelling is necessary before we can attain to the skill of reading, you must not withhold the spelling-book from the learner, because you do not want him to learn the art; and you must never forget the law to which I have alluded in a previous part of this work, that the advancement of mankind is made possible, among other things, by the fact that when a great acquisition is once made on the field of civilization, succeeding generations, or other clusters of men, are not obliged to pass through all the stages of painful struggle, error or tardy experience, which may have occupied the pioneering nation.

The third additional remark I desire to make is, that institutional and diffused self-government is peculiarly efficient in breaking those shocks which, in a centralized government, reach the farthest corners of the country, and are frequently of a ruinous tendency. This applies not only to the sphere of politics proper, but to all social spheres which more or less affect the political life of a nation. There are two similar cases in French and English his-

tory which seem to illustrate this fact with peculiar force.

Every historian admits that the well-known and infamous necklace affair contributed to hasten on the French revolution, by degrading the queen, and with her royalty itself, in the eye of France, which then believed in the culpable participation of the queen. England was obliged to behold a far more degrading exhibition—the trial of queen Caroline, the consort of George the Fourth. There was no surmise about the matter. Royalty was exhibited before the nation minutely in the fullest blaze of publicity, and mixed up with an amount of immundicity the exact parallel to which it is difficult to find in history. Every civilized being seemed to be interested in the trial. I recollect during my boyhood having seen kerchiefs with the queen's trial printed upon them, in Switzerland, for continental consumers. The trial, too, took place at a somewhat critical period in England. Yet I am not aware that it had any perceptible effect on the public affairs of England. The institutions of the country could not be affected by it any more than high walls near muddy rivers are affected by the slime of the tides. But royalty on the continent, trying at that very time to revive absolutism founded upon divine right,<sup>3</sup> was affected by the people thus seeing that

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<sup>3</sup> It was the time when Haller wrote his *Restoration of Political Sciences*, in which he endeavors to excel Filmer, and does not blush to hold up uncompromising absolutism, although a native of Switzerland; but, having secretly become a catholic, he passed into the service of the Bourbons.

the purple is too scant to cover disgrace and vulgarity.

Let an American imagine what would be the inevitable consequences of local or sectional errors and excitements, of which we are never entirely free, if we did not live under a system of varied institutional self-government; each shock would be felt from one end of our country to the other with unbroken force. Had we nothing but uninstitutional Gallican universal suffrage, spreading like one undivided sea over the whole, we could not continue to be a free people, and hardly to be a united people, though unfree.

A similar remark may be made with reference to that period in French history which actually obliges the historian to be at least as familiar with the long list of royal courtesans<sup>4</sup> as with the prime ministers. The effect of this example of the court has been most disastrous upon all France. The courts of England under Charles the Second and James the Second were no better. The conduct of George the First and George the Second added coarseness to royal incontinency. The English nobility followed very close in the wake of their royal masters; but here it stopped. The people of England—England herself—remained comparatively untouched, and while the court plunged into vices, the people went their own way, rising and improving. Had England been an uninstitutional country, the effect must have been the same which ruined France.

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<sup>4</sup> The very etymology, with its present meaning, is significant.

Another observation suggested by the subject which we contemplate is, that a wide-spread and penetrating institutional self-government has the same concentrative effect upon society which a careful and responsible occupation with one's own affairs and duties has upon the individual. This may indeed be counteracted and suspended by other and powerful circumstances; but the natural effect of institutional self-government is, I believe, such as I have just indicated.

A large and active nation, which therefore instinctively seeks a political field of action for its energy, and which nevertheless is destitute of self-ruling institutions, will generally turn its attention to conquests or any other increase of territory, merely for the sake of conquest or of increased width until a political gluttony is produced which resembles the immoderate desire for more land of some farmers. They neglect the intensive improvement of their farm, and are known by every experienced agriculturist to be among the poorest of their class. Extension may become desirable or necessary; but extension merely for the sake of extension is at once the most debilitating fever of a nation and the rudest of glories, in which an Attila or Timour far excels a Fabius or a Washington. So soon as a nation abandons the intensive improvement of its institutions, and directs its attention solely to foreign conquest, it enters on its downward course, and loses the influence which may have been assigned to it by Providence. The truest, most intense and most enduring influence a people exercises upon others is

through its institutions and their progressive perfection.<sup>5</sup> The sword does not plough deep.

This is the reason, it may be observed, why the historian, the more truly he searches for the real history of nations, and the more philosophical strength his mind is gaining, becomes the more attentive to the political life manifested by the institutions of a people. It distinguishes a Niebuhr from a common narrator of Rome's many battles.<sup>6</sup>

On the other hand, we may observe a similar

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<sup>5</sup> There are persons among us who have fallen into this error; and it will always be found that they proportionately disregard our institutions, or are not imbued with esteem for institutional government. I lately received a pamphlet in which the author wishes for a confederacy embracing America from Greenland to Cape Horn. "Universal governments" were the dream of Henry the Fourth, and again pressed into service by Napoleon. I am not able to answer the reader, why that confederacy should comprehend America only. There is no principle or self-defining idea in the term America. America is a name. The water which surrounds it has nothing to do with principles. Water, once the Dissectable Mare, now connects. Polynesia ought to be added, and perhaps Further Asia, and why not Hindostan? Our oath of allegiance might be improved by promising to be faithful to the United States *et cetera*, as archbishop Laud's famous oath bound the person who took it upon an *Et Cetera*.

<sup>6</sup> The same phenomenon may be observed in the more philosophical division of history. People begin to divide the history of a nation by the monarchs, or by any other labelling. When they penetrate deeper, they divide history by the rise and fall of institutions, of classes, of interests, of great ideas. To divide the history of England by George the First and George the Second is about as philosophical as if a geologist were to color a chart, not according to the great layers that constitute the earth, but by indicating where the people walking upon it wear shoes or sabots, or walk barefooted.

effect upon cabinets. It seems to me one of the best effects of local and national self-government, with its many elementary institutions and a national representative government, that diplomacy ceases to form the engrossing subject of statesmanship. Shrewd as English diplomacy has often proved, the history of that country, in the eighteenth century, is nevertheless a totally different one from that of the other European countries in the same period. It seems as if continental statesmanship sought for objects to act on, in foreign parts, in concluding alliances and making treaties; in one word, cultivated diplomacy for the sake of diplomacy. Yet nothing is surer to lead to difficulties, to wars and suffering, than this reversed state of things.<sup>7</sup>

Some remarks on the undue influence of capitals in countries void of institutions would find an appropriate place here; but they are deferred until we shall have considered the peculiar attributes of centralization, the opposite of institutional self-government, somewhat more closely.

Patience, united with energy, is as much an element of progress and efficient action in public concerns as in private matters. Mr. Lamartine has feelingly said some excellent truths on this subject, in his *Counsellor for the People*; but it does not seem possible to unite the two in popular politics and in

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<sup>7</sup> We ought to compare the repeated advice of the greatest Americans, to beware of alliances, with the contents of such works as Raumer's *Diplomatic Dispatches of the Last Century*. It is for this reason that the present publicity of diplomacy has such vital importance.



the service of liberty, except by the self-government which we are contemplating. Patience, as well as desire of action, can exist separately without an institutional government, but in that case they are both destructive to freedom. Activity, without institutions, becomes a succession of unconnected efforts; patience, without institutions that constantly incite by self-government, and rouse as much as they form the mind, becomes mere submission, and ends in Asiatic resignation.

It would seem, also, that by a system of institutional self-government alone the advantage can be obtained of which Aristotle speaks, when he says that the *psephisma* (the particular and detailed law) ought to be made so as to suit the given cases by the Lesbian canon,<sup>8</sup> and ought to be applied so as to fit the exact demands.

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<sup>8</sup> The cycloplan walls in Greece and Italy, built before the memory even of the ancients, and many of which still stand as firm as if raised in recent times, have their strength in the irregularity of the component stones, and the close fitting of one to the other, that no interstices are left even for a blade of grass to grow. An irregular polygonal stone was placed first; sheets of lead were then closely fitted to the upper and lateral surfaces. When taken off, they served as the patterns according to which the stones to be placed next were hewn. It was this sheet and this mode of proceeding which was called the Lesbian canon or rule, while the canon or rule which the architect laid down alike for all stones of an intended wall was called a general canon. See *On the Cycloplan Walls*, by Forchhammer, Kiel, 1847. Now, Aristotle compares the general law, the *nomos*, to the general canon, but the particular law, the *psephisma*, ought, as he says, to be made by the Lesbian canon. *Ethica ad Nicomachum*, 5, 14. It is inelegant, I readily confess, to use a figure which it is necessary to explain, but I

It is on account of the institutional character of the British polity in general and of the English constitution in particular—on account of the supremacy of the law and of the spirit of self-government which in a high degree pervades the whole polity and society of that country, that, long ago, I did not hesitate to call England a royal republic.<sup>9</sup> Dr. Arnold, some five years later, expressed the same idea, when in the introduction to his *Roman History* he styles his country “a kingly commonwealth.” It will be hardly necessary to add that the British commonwealth is in many respects of a strongly patrician character, that it is occasionally aristocratic, and that the Englishman believes one of the excellencies of his polity to consist in the fact that it contains in the monarch an element of conservatism apparently high above the contending elements of progress and popular liberty.<sup>10</sup> What advantages

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am not acquainted with any process in modern arts similar to the one used as an illustration by the great philosopher, except the forming of the dentist's gold plate according to a mould taken from nature itself. I naturally preferred the simile of the philosopher, even with an explanatory note, to the unbidden associations which the other simile carries along with it. Nor would I withhold from my reader the pleasure we enjoy when a figure or simile is presented to us, so closely fitting the thought like the Lesbian canon, and so exact that itself amounts to the enunciation of an important truth, well *formulated*. This is the case with Aristotle's figure. I was desirous of transferring it into my book.

<sup>9</sup> In my *Political Ethics*, first published in 1838.

<sup>10</sup> I do not know that this opinion was ever more strikingly symbolized than lately, when lord John Russell, the leader of the administration in the commons, moved an address of congratulation to the queen on the birth of a prince, and Mr. Disraeli, the leader

and disadvantages may be wound up in this part, and how far the actual position of Great Britain, the state of her population and her historical development may make it necessary, it is not our task to investigate, any more than to inquire whether the steady progress of England has not been toward a more and more fully developed institutional self-government and virtual republicanism, or whether the absolutists of the continent may be right as to this fact when they maintain that England is no bona fide monarchy, and by her unfortunate example is the chief cause of European unrest, by which of course the advocates of despotic power mean the popular longing for liberty.

My expression has been called "very bold." Whether it be so or not is of little importance. I have given my reason why I have called the English polity thus, and I may be permitted to add that in doing so I meant to use no rhetorical expression, but philosophically to designate an idea, the truth of which has been ever since impressed on my mind more strongly by extended study and the ample commentaries with which the last lustre has furnished the political philosopher.

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of the opposition in the same branch, seconded the motion, while a similar motion was made in the lords by lord Aberdeen, the premier of the administration, seconded by the earl of Derby, the premier of the lately ousted administration, and very bitter opponent to the present ministry. What the queen is, in this respect, in England, is the constitution or rather the Union in the United States. Our feelings of loyalty centre in these, but not in our president, any more than an Englishman's loyalty finds a symbol in his prime minister.

The opposite idea was expressed by a French politician of distinction, when, in writing favorably of Louis Napoleon after the vote which succeeded the Second of December, but before he ascended the imperial throne, he said: "universal suffrage is the republic."<sup>11</sup> It will be our duty to consider more in detail the question, whether inorganic, bare, universal suffrage has any necessary and intrinsic connection with liberty or not, and to inquire into the consequences to which uninstitutional suffrage always leads. In this place I would only observe that if he means by republic a polity bearing within its bosom civil liberty, the dictum is radically erroneous. If by republic, however, nothing is meant but a kingless state of politics, irrespective of liberty or the good government of freemen, it is not worth our while to stop for an inquiry. Nothing, indeed, is more directly antagonistic to real self-government than inorganic universal suffrage spreading over a wide dominion. I would also allude once more to the fact that universal suffrage is after all a *modus*, and not the *essence*. If, however, it leads to the opposite of self-government, we have no more right to call it "the republic," nor to consider it a form of liberty, than the ancient Germans had a right to be proud of their liberty, after they had gamed themselves into slavery, as Tacitus tells us that many did.

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<sup>11</sup> Mr. Emil Girardin, who has been referred to several times. He is an unreserved writer, who knows how to express his ideas distinctly, and who is a representative of very large numbers of his countrymen.

According to the French writer, the Roman republic might be said to have continued under the Caesars, who were elected by the prætorians, and an elective monarchy would present itself as an acceptable government, while, in reality, it is one of the worst. For, it possesses nearly all the evils inherent in the monarchical government, without its advantages, and all the disadvantages of a republic, vastly increased, without its advantages. History, I think, fully bears us out in this opinion, notwithstanding one authority—the only one of weight I can remember—to the contrary.<sup>12</sup>

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<sup>12</sup> Lord Brougham, in his *Political Philosophy*, speaks in terms of high praise of the elective government of the former Germanic empire. Native and contemporary writers have not done so. It was only after the expulsion of the French, and when the German people instinctively longed for German unity and dignity, that, at one time, a poetic longing for the return of the medieval empire was expressed by some. If there be any German left who still desires a return to the elective empire, he must be of a very retrospective character.

## CHAPTER XXX.

INSTITUTIONAL GOVERNMENT THE ONLY GOVERNMENT  
WHICH PREVENTS THE GROWTH OF TOO MUCH  
POWER. LIBERTY, WEALTH AND LONGEVITY OF  
STATES.

UNIVERSAL suffrage is power—sweeping, real power—so vast, that even its semblance bears down everything before it. Uninstitutional universal suffrage may be fittingly said to turn the whole popular power and national sovereignty—the self-sufficient source of all derivative power—into an executive, and thus fearfully to confound sovereignty with absolute power, absolutism with liberty.

Still, the idea of all government implies power, while that of liberty implies check and protection. It is the necessary harmony between these two requisites of all public vitality and civil progress, which constitutes the difficulty of establishing and maintaining liberty—a difficulty far greater than that which a master mind has declared the greatest, namely, the founding of a new government.<sup>1</sup>

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<sup>1</sup> Machiavelli—tanto nomini nullum par elogium—says in his Prince: "But in the new government lies the greatest difficulty." This depends upon circumstances. He undoubtedly had in mind the difficulty of uniting Italy, or rather of eliminating so many

Power is necessary, and an executive cannot be dispensed with; and all power has a tendency to increase, to clear away opposition, and to absorb or break down the weaker one. It would not be power if it had not this tendency. How then is liberty to be preserved? A new power may be created to check the first, like the Roman tribune; but the newly created power is power, and how is this in turn to be checked? Erecting one tier of power over the other affords no remedy. The chief power may thus be made to change its name or place; but the power with all its attributes is there.

Nor will it be supposed that salvation can be found in the mere veto, however multiplied. For the veto, although appearing negative with reference to that which is vetoed, nevertheless is power in itself, and to rest civil liberty upon a system of mere vetoes would indeed be expecting life, action, growth,

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governments and establishing one Italian state. For there has been no noble Italian, since the times when Dante called his own Italy: *Di dolor ostello*, that does not yearn for the union of his noble land, and look for the realization of his hopes as fervently as he believes in a God. Machiavelli was one of the foremost among these true Italians. But he had not lived through our times. There are times when the people throw themselves into the arms of any one that possibly may save them from impending or imaginary shipwreck, or promises to do so. Wearied people will take a stone for a pillow, and no people deceive themselves so easily as the panic-stricken. On such occasions it is easy to establish a new government, especially if cumbersome conscience is set aside. The reverse of Machiavelli's dictum then takes place, and the greatest difficulty lies in maintaining a government. This applies even to administrations and ministries. All is pleasant sailing at first. A new power charms like a rising sun; but the heat of noon follows upon the morning.

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and that which is positive, from a system of negativism. A government without power and inherent strength is like aught else without power, useless for action. Yet action is the object of all government. The single Polish nobleman who possessed the *rakosh* or veto had a very positive but a very injurious power. It was the pervading idea, in the middle ages, to protect by the requisition of unanimity of votes on all important questions. But, on the one hand, this is the principle which belonged to the disjunctive state of the middle ages, not to our broad national liberty; and, on the other hand, unanimity does not of itself insure protection or liberty. Tyranny or corruption has often been unanimous.

The only way of meeting the difficulty is to prevent the overbearing growth of any power. When grown, it is too late; and this cannot be done by putting class against class, or interest against interest. One of these must be stronger than the other, and become the absorbing one. Nor is the problem we have to solve discord. It is harmony, peace, united yet organic action. History or speculation points to no other solution of this high problem of man, than a well-grounded and ramified system of institutions, checking and modifying one another, strong and self-ruling, with a power limited by the very principle of self-government within each, yet all united and working toward one common end, thus producing a general government of a co-operative character, and serving in many cases in which interests would jar with interests without institutions, as friction rollers do in machinery.



The institution is strong within its bounds, yet not feared, because necessarily bounded in its action. What can be more powerful than the king's bench in England, in each case in which it acts within its own limits. Now older than five hundred years, it has repeatedly stood up against parliament with success. Yet no one fears that its power will invade that of other institutions, nor did the people of the State of New York fear that the court of appeals would become an invasive power, when in its own legitimate and efficient way it lately declared the vast Canal Enlargement Law, passed by a great majority, unconstitutional, and consequently null and void.

Seeking for liberty merely or chiefly in a vetitive power of each class or circle, interest or corporation, upon the rest, as has been often proposed, and every time after a revolution, in modern times,<sup>2</sup> would simply amount to dismembering, instead of constructing. It would produce a multitudinous antagonism, instead of a vital organism, and it would be falling back into the medieval state of narrow chartered independencies. We cannot hope for liberty in a pervading negation, but must find it in comprehensive action. All that is good or great is creative and positive. Negation cannot stand for itself, or impart life. But that negation which is necessary to check and refrain is found in the self-government of many and vigorous institutions, as they also are the only efficient pre-

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<sup>2</sup> Harris, in his *Oceana*, St. Just, in the first French revolution, and many former and recent writers might be mentioned.

ventives of the undue growth of power. If they are not always able to prevent it, man has no better preventive. When, in the seventeenth century, the Danes threw themselves into the power of the king, making him absolute, in order to protect themselves against baronial oppression; they necessarily created a power which in turn became oppressive. The English, on the contrary, broke the power of their barons, not by raising the king, but by increasing self-government.

We find, among the eharacteristic distinctions between modern history and ancient,<sup>3</sup> the longevity

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<sup>3</sup> These differences between antiquity and modern times, all of which are more or less connected with christianity and the institution, are:

1. That in antiquity only one nation flourished at the time. The course of history, therefore, flows in a narrow channel, and the historian can easily arrange universal ancient history. In modern times, many nations flourish at the same time, and their history resembles the broad Atlantic, on which they all freely meet.

2. Ancient states are short-lived; modern states have a far greater tenacity of life.

3. Ancient states, when once declining, were irretrievably lost. Their history is that of a rising curve, with its maximum and declension. Modern states have frequently shown a recuperative power. Compare present England with that of Charles II., France as it is with the times of Louis XV.

4. Ancient liberty and wealth were incompatible, at least for any length of time; modern nations grow freer and richer at the same time.

5. Ancient liberty dwelt in city-states only; modern liberty requires enlarged societies—nations.

6. Ancient liberty demanded disregard of individual liberty; modern liberty is founded upon it.

7. The ancients had no international law. (Nor have the Asiatics now.)

of modern states, contemporaneous progress of wealth or culture and civil liberty, and the national state a contradistinguished to the ancient city-state, the only state of antiquity in which liberty appeared. These are not merely facts which happen to present themselves to the historian, but they are conditions upon which it is the modern problem to develop liberty because they are requisites for modern civilization and civilization is the comprehensive aim of all humanity.

We must have national states (and not city-states); we must have national broadcast liberty (and not narrow chartered liberty); we must have increasing wealth, for civilization is expensive; we must have liberty, and our states must last long, to perform their great duties. All this can be obtained by institutional liberty alone. It is neither maintained that longevity alone is the object, nor that it can be obtained by institutions alone. Russia, peculiarly uninstitutional, because it unites Asiatic despotism with European bureaucracy, has lasted long, even though we may consider its late celebration of its millennial existence as a great official license. But what is maintained here is, that longevity, together with progressive liberty, is obtainable only by institutional liberty. England, now really a thousand years old, presents the great spectacle of an old nation advancing steadily in wealth and liberty. She is far richer than she was a century ago, and her government is of a far more popular cast. In ancient times, it was adopted as an axiom that liberty and wealth are incompatible. Modern writers, down to a very

recent period, have followed the ancients. Declaimers frequently do so to this day; but they show that they do not comprehend modern liberty and civilization. Modern in-door civilization, with all her schools and charities and comforts of the masses, is incalculably dearer than ancient out-door civilization. Modern civilization is very dear. Yet our liberty requires civilization as a basis and a prop; our progressive liberty requires progressive civilization, consequently progressive wealth—not, indeed, enormous riches in the hands of a few. Antiquity knew, and Asia possesses to this day such riches in greater number than modern Europe has ever known them.<sup>4</sup> We stand in need of immeasurable wealth, but it is diffused, widely spread and widely enjoyed wealth, for we stand in need of widely spread and widely enjoyed culture.

To last, to last with liberty and wealth, is the great problem for a state. Our destinies differ from that of brief and brilliant Greece. Let us derive all the benefit from Grecian culture and civilization—from that chosen nation, whose intellectuality and æsthetics, with christian morality, Roman legality and Teutonic individuality and independence, form the main elements of the great phenomenon we designate by the term modern civilization, without adopting her evils and errors, even as we adopt her sculpture without that religion whose very errors contributed to produce it.

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<sup>4</sup> Indeed, the enormous treasures occasionally met with in Asia are indications of her comparative poverty.

## CHAPTER XXXI.

INSECURITY OF UNINSTITUTIONAL GOVERNMENTS. UN-  
ORGANIZED, INARTICULATED POPULAR POWER.

THE insecurity of concentrated governments has been mentioned in a previous part of this work. The same may be said of all governments that are not of a strongly institutional character. Eastern despotism is constantly exposed to the danger of seraglio conspiracies, as the centralized governments of the European continent showed their insecurity in the year 1848. They rocked and many broke to pieces, although there was, with very few exceptions, no ardent struggle, and nothing that approached to a civil war. To an observer at a distance, it almost appeared as if those governments could be shaken by the loud huzzaing of a crowd. They have, indeed, recovered; but this may be for a time only; nor will it be denied that the lesson, even as it stands, is a pregnant one.

During all that time of angry turmoil, England and the United States stood firm. The government of the latter country was exposed to rude shocks indeed, at the same period; but her institutional character protected her. England has had

her revolution ; every monarchy probably must pass through such a period of violent change ere civil liberty can be largely established and consciously enjoyed by the people—ere government and people fairly understand one another on the common ground of liberty and self-government. But no fact seems to be so striking in the revolution of the seventeenth century in England as this, that all her institutions of an organic character, her jury, her common law, her representative legislature, her local self-government, her justice of the peace, her sheriff, her coroner—all survived the sanguinary struggle, and then served as the basis of an enlarged liberty. The reason of this broad fact cannot be that the English revolution did not occur in a time of bold philosophical speculation as the French revolution did. The English religionists of the seventeenth century were as bold speculative reasoners as the French philosophers were, and England's religious fanatics were quite as fierce enemies of property and society as the French political fanatics were. It was, in my opinion, pre-eminently her institutional character in general, or the whole system of institutions and the degree of self-government contained in each, that saved each single institution, and enabled her to weather the storm when she was exposed to the additional great danger of a worthless general government after the restoration. There is a tenacity of life and reproductive principle of vitality exhibited in the whole seventeenth century of British history, that cannot be too attentively examined by the candid statesmen of our family of nations.

It may be objected to my remarks that Russia, too, has remained untouched by the attempted revolutions of the year 1848, although her government is a very centralized one. Russia has in some respects much of an Asiatic character, and the succession of her monarchs is marked by an almost equal number of palace conspiracies and imperial murders or imprisonments.<sup>1</sup> The people, on the other hand, have not yet been reached by the political movements of our race. There is in politics, as in all spheres of humanity, such a thing as being below and being above an evil. Many persons that are free from skepticism are not above it, but the fearful questions have never yet presented themselves; and many nations remain quiet, while others are torn by civil wars, not because they are above, but because they are still below revolutions.

Russia may be said, in one respect at least, to furnish us with the extreme opposite to self-government. "The service," that is, public service, or being a servant of the imperial government, has been raised in that country to a real cult, a sort of official religion. Any infraction of justice, any hardship, any complaint will be replied to with a shrug of the shoulder and the words "the service." The term service in its present Russian adaptation is the symbol for the most absolute government, the most passive bureaucracy, and a most automaton-like government played by

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<sup>1</sup> A London journal said some years ago, with great bitterness, yet with truth: A Russian czar is a highly assassinated substance.

the czar, and it is thus, as I called it, the extreme opposite to our self-government.

If concentrated governments are insecure, mere unorganized and uninstitutional popular power is no less so, and neither such power nor mere popular opposition to all government is a guarantee of liberty. The first may be the reason why all the Athenian political philosophers of mark looked from their own state of things, during and after the Peloponnesian war, with evident favor upon the Lacedæmonian government. Lacedæmon was, indeed, no home for individual liberty; but they saw in Sparta permanent institutions, and without having arrived at a perfectly clear distinction between an institutional government and one of a tossing absolute market majority, they may have perceived, more or less instinctively, that neither permanency nor safety is possible without an institutional system. They must have perceived that there was no individual liberty in Sparta; but her institutional character may have struck them, and the contrast may have lent to that government the appearance of substantial value which it did not possess in reality. It seems otherwise difficult to explain why the most reflecting should have preferred a Lacedæmon to an Athens, even if we take into account the general view of the ancients that individuality must be sacrificed to the state—a view of which I have spoken at the beginning of this work.

As to the second position, that the guarantee of liberty cannot be sought for in mere opposition to government or in a mere negation of power, it is



only necessary to reflect that in such a state of things one of three things must necessarily happen. Either the people are united and succeed in enfeebling or destroying the government, in which case again the new government has the whole sweeping power, and of course is in turn a negation of liberty; thus substituting absolutism for absolutism. Or the people are not united, do not succeed, and leave the government more powerful and despotic than before. Or a state of things is brought about in which all power is destroyed—political asthenia. It is a state of political disintegration, leading necessarily to general ruin, and preparing the way for a new, generally a foreign power, which then rears something fresh upon the ruins of the past, fabrics that are cemented with blood and tears.

There is no other way to escape from the appalling dilemma than to unite the people and government into one living organism, and this can only be done by a widely ramified system of sound institutions, instinct with self-government.

It is not maintained that history does not furnish us with instances of national conditions in which nothing remains possible but a general rising against a government that had become isolated from the people; but nothing is gained if the new state of things is not founded upon institutions. This is, indeed, a difficult task; at times it would seem impossible. If so, the ruin of the whole is decreed; and its accomplishment adds another lesson to the many stored up in the book of history, that those nations who neglect to provide for institutions, and

to allow them freely to grow, are walking the path of political ruin.

We are now fully able to judge how utterly mistaken those are who endeavor to press the opinion upon the people that "there are but two principles between which civilized men have to choose—Divine Right and Democratic Might." The one is as ungodly as the other. Neither is founded in justice; neither admits of liberty; both rest on the principle of absolutism. Both are theories fabricated by despotism, false in logic, unhallowed in practice, and ruinous in their progress.

Allusion has been made before to the common mistake of those who are not bred in civil liberty, and are unacquainted with the appliances of self-government, that they believe popular power alone, uniform, sweeping and inorganic, constitutes liberty, or is all that is necessary to insure it. It is doubtless that which is generally called democracy in France and on the continent of Europe. It confounds, as we have seen, things entirely distinct in their nature. Power is not liberty. Power is necessary for protection, and liberty consists in a great measure in protection of certain rights and certain institutions; nevertheless, power is not liberty, and because it is power it requires limitation, or, as I have stated, it is necessary to prevent the generation of dangerous power. Of all power, however, popular power, if by this term we designate uninstitutional power of the multitude, is at once the most direct, because not borrowed nor theoretical, and the most deceptive, because, in reality, it is necessarily

led or handled by a few or by one. The ancients knew this perfectly well, and repeatedly treated of the fact; but it is not essential that the agora, the bodily assembled multitude, have unlimited and un-institutional power. The same defects exist and the same results are produced where, so to speak, the market extends over a whole country, and where all liberty is believed to consist in one solitary formula—universal suffrage. Many effects of the latter are, indeed, more serious.<sup>3</sup>

No evolution of public opinion, no debate, no gradual formation takes place. Some one prepares measures, and Yes or No is all that can be asked.

Whenever we speak of the power of the people, in an unorganized state, we cannot mean anything else but the power of the majority, and where liberty is believed to consist in the unlimited power of the people, the inevitable practical result is neither more nor less than the absolutism of the majority and the total want of protection of the minority.

As, however, this uninstitutional multitude has no organism, it is, as I have stated, necessarily led by a few or one, and thus we meet in history with the invariable result, that virtually one man rules where absolute power of the people is believed to exist.

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<sup>3</sup> Nowhere, I believe, can the views of a large class of Frenchmen on this subject be found more distinctly enounced than in the different works of Mr. Louis Blanc. They are many, and, in my opinion, as may be supposed, often very visionary; but Mr. Blanc is the spirited representative of that French school, which believes that liberty is power, that the ouvriers are the people, that wealth consists in the largest possible amount of currency, and money is a deception, and that communism will save the world.

After a short interval, that one person openly assumes all power, sometimes observing certain forms of having the power of the people passed over to him. The people have already been familiar with the idea of absolutism—they have been accustomed to believe that, wherever the public power resides, it is absolute and complete, so that it does not appear strange to them that the new monarch should possess the unlimited power which actually resided in the people or was considered to have belonged to them. There is but one step from the "*peuple tout-puissant*," if, indeed, it amounts to a step, to an emperor tout-puissant.<sup>3</sup>

It is a notable fact which, so far as I know history, has no important exception, that in all times of civil commotion in which two vast parties are arrayed against each other, the anti-institutional masses,

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<sup>3</sup> This, it will be observed, is very different from the English maxim, the parliament is omnipotent. Unguarded and extravagant as it is, it only means that parliament has the supreme power. But parliament itself is a vast institution, and part and parcel of a still vaster institutional system, which is pervaded by the principle of self-government. Parliament has often found that it is not omnipotent when it has attempted to break a lance with the common law. It is as unguarded a maxim as that the king can do no wrong, which is true only in a limiting sense, namely, that because *he* can do no wrong, some one else must be answerable for every act of his. Besides, there is the marginal note of James the Second, appended to this maxim, which never has been understood to mean, what the ancient French maxim meant: In the presence of the king, the laws are silent; or what was meant by the famous "*bed of justice*," namely, that the personal presence of the monarch silenced all opposition, and was sufficient to ordain everything.

which are erroneously, yet generally called the people, are monarchical, or for trusting power into the hands of one man. All dictators have become such by popular power, if the commotion tended to a general change of government. It was the case in Rome when Cæsar ruled. The party in the Netherlands which clamored for the return of the Stadtholder against that great citizen De Witt, and was bent on giving the largest extent of hereditary power to the house of Orange, was the popular party. Cromwell was mainly supported by the anti-institutional army and its adherents. We may go farther. The rise of the modern principate, that is, the vast increase of the power of the prince and the breaking down of the baronial power, was everywhere effected by the help of the people. We have not here to inquire, whether in many of these struggles the people did not consciously or instinctively support the prince or leader against his opponents, because the ancient institutions had become oppressive. At present, it is the fact alone which we have to consider.

Probably it was this fact, together with some other reasons which caused Mr. Proudhon, the socialist, to utter the remarkable dictum that "no one is less democratic than the people."

The fact is certain that, merely because supreme power has been given by the people, or is pretended to have been conferred by the people, liberty is far from being insured. On the contrary, inasmuch as this theory rests on the theory of popular absolutism, it is invariably hostile to liberty, and, generally, forms the foundation of the most stringent and odious des-

potism. To use the words of Burke: "Law and arbitrary power are in eternal enmity. . . It is a contradiction in terms, it is blasphemy in religion, it is wickedness in politics, to say that any man can have arbitrary power. . . We may bite our chains if we will; but we shall be made to know ourselves and be taught that man is born to be governed by law; and he that will substitute will in the place of it is an enemy to God."<sup>4</sup>

I add the words of a greater man, the elder Pitt, and be it remembered that he uttered them when he was an old man.

"Power," said he, "without right is the most detestable object that can be offered to the human imagination; it is not only pernicious to those whom it subjects, but works its own destruction. *Res detestabilis et caduca*. Under the pretence of declaring law, the commons have made a law, a law for their own case, and have united in the same persons the offices of legislator and party and judge."<sup>5</sup> Frederic the Great, of Prussia, saw this very clearly, for he said "he could very well understand how one man might feel a desire to make his will the law of others, but why thirty thousand or even thirty millions should submit to it he could not understand." This is a dictum of a monarch who probably knew or suspected as little of an institutional self-government as any one, and who continually complained of the power of parliament in changing ministers, when

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<sup>4</sup> Mr. Burke said so in 1788.

<sup>5</sup> He spoke of Wilkes's expulsion.

England was his ally.<sup>6</sup> But was he sincere when he wrote those words? Was he still in his period of philosophic sentiment? Did he really not see why it so often happens, or did he utter them merely as something piquant?

By whatever process this vast popular power is transferred, or pretended to be transferred—for we must needs always add this qualification—is of no manner of importance with reference to liberty. Immolation brings death, though it should be self-immolation, and of the two species of political slavery, that is probably the worst which boasts of having originated from free self-submission, such as Hobbes believed to have been the origin of all monarchy, and of which recent history has furnished an apparent frightful instance.

Nothing is easier than to show to an American or English reader that the origin of power has of itself no necessary connection with liberty. What Ameri-

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<sup>6</sup> Raumer gives the dispatches from Mitchell, the English minister near the court of Frederic. The minister reports many complaints of the king, of this sort. But Frederic is not the only one who thus complained. General Walsh, that native Frenchman, who became minister of Spain, did the same. See Coxe's *Memoirs*, mentioned before. So when Russian statesmen desire to show the superiority of their government, they never fail to dwell on the low position of an English minister, inasmuch as he depends upon a parliamentary majority, or, as an English minister expressed it, must be the minister of public opinion. See Mr. Urquhart's *Collection*. I believe it will always be found that, where absolute governments come in contact with those of freemen, the former complain of the instability of the latter. They consider a change of ministry a revolution.

can would believe that a particle of liberty were left him if his country were denuded of every institution, federal or in the states, except the president of the whole, though he should continue to be elected every four years by the sweeping majority of the country from New York to St. Francisco? Or what Englishman would continue to boast of self-government, if a civil hurricane were to sweep from his country every institution, common law and all, except parliament, as an "omnipotent" body indeed?

The opposite of what we have called institutional self-government is that liberty which Rousseau conceived of, when, in his *Social Contract*, he not only assigns all power to the majority, and almost teaches what might be called a divine right of the majority, but declares himself against all division. He insists upon an inarticulated, unorganized, uninstitutional majority. It is a view which is shared by many millions of people on the European continent, and has deeply affected all the late and unsuccessful attempts at conquering liberty. Rousseau wrote in a captivating style, and almost always plausibly, very rarely profoundly. The plausible, however, is almost invariably false in all vast and high spheres; still it is that which is popular with those who have had no experience to guide them; and since the theory of Rousseau has had so decided an influence in those parts, and since no one can understand the recent history without having studied the *Social Contract*,<sup>7</sup>

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<sup>7</sup> The *Contract Social* was the bible of the most advanced convention men. Robespierre read it daily, and the influence of that book can be traced throughout the revolution. Its ideas, its sim-



that theory may be called Rousseauism, for brevity's sake.

We return once more to the despotism founded upon pre-existing popular absolutism. The processes by which the transition is effected are various. The appointment may deceptively remain in the hands of the majority, as was the case when the president of the French republic was apparently elected for ten years, after the second of December; or the prætorians may appoint the Cæsar; or there may be apparent or real acclamation for real or pretended services; or the emperor may be appointed by auction, as in the case of the emperor Didius; or the process may be a mixed one. The process is of no importance; the facts are simply these, that the power thus acquired is despotic, and hostile to self-government; secondly, the power is claimed on the ground of absolute popular power; and, thirdly, it becomes the more uncompromising because it is claimed on the ground of popular power.

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plicity and its sentimentality had all their effects. Indeed, we may say that two books had a peculiar influence in the French revolution, Rousseau's *Social Contract* and Plutarch's *Lives*, however signally they differ in character. The translation of Plutarch by Amyot in the sixteenth century—it was the period of *Les Cents Contre Un*—and subsequent ones, had a great effect upon the ideas of a certain class of reflecting Frenchmen. We can trace this down to the revolution, and in it we find with a number of leading men, a turn of ideas, a conception of republicanism formed upon their view of antiquity, and a stoicism which may be fitly called Plutarchism. It is an element in that great event. It showed itself especially with the Brissotists, the Girondists, and noble Charlotte Corday was imbued with it. A very instructive paper might be written on the influence of Plutarch, ever since that first translation, in French history.

## CHAPTER XXXII.

## IMPERATORIAL SOVEREIGNTY.

THE Cæsars of the first centuries always claimed their power as bestowed upon them by the people, and went so far even as to assume the prætorians, with an accommodating and intimidated senate, as the bodies which represented, for the time, the people. The Cæsars never rested their power upon divine right, nor did they boldly adopt the Asiatic principle in all its nakedness, that power—the sword, the bow-string, the mere possession of power—is the only foundation of the right to wield it. The *majestas populi* had been transferred to the emperor.<sup>1</sup> Such

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<sup>1</sup> The idea of the *populus* vanished only at a late period from the Roman mind; that of liberty had passed away long before. Fronto, in a letter to Marcus Aurelius (when the prince was Cæsar), mentions the applause which he had received from the audience for some oration which he (Fronto) had delivered, and then continues thus: “Quorsum hoc retuli? uti te, Domine, ita compares, ubi quid in cœtu hominum recitabis, ut scias auribus serviendum: plane non ubique et omni modo, attamen nonnunquam et aliquando. Quod ubi facies, simile facere te reputato, atque illud facitis, ubi eos qui bestias strenue interfecerint, *populo postulante* ornatis aut manumittitis, *nocentes etiam homines aut scelere damnatos, sed populo postulante conceditis*. Ubique igitur *populus dominatur et præpolllet*. Igitur ut *populo gratum erit, ita facies atque ita dices*.” *Epist. ad Marc. Cæs. lib. i. epis. 1.*

was their theory. Julius, the first of the Cæsars, made himself sole ruler by the popular element, against the institutions of the country.

If it be observed here that these institutions were effete, that the Roman city-government was impracticable for an extensive empire, and that the civil wars had proved how incompatible the institutions of Rome had become with the actual state of the people, it will be allowed—not to consider the common fact that governments or leaders first do everything to corrupt the people or plunge them into civil wars, and then, “taking advantage of their own wrong,” use the corruption and bloodshed as a proof of the necessity to upset the government<sup>2</sup>—it will be allowed, I say, that at any rate Cæsar did not establish liberty, or claim to be the leader of a free state, and that he made his appearance at the very close of a long period of freedom, marking the beginning of the most fearful period of decadence which is recorded; and that, in general, all rulers vested with this imperial sovereignty<sup>3</sup> unfortunately never prepare a better state of things with reference to civil

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<sup>2</sup> Not unlike the conduct of the powers surrounding Poland, before they had sufficiently prepared her partition. The government of Poland was certainly a very defective one, but it was the climax of historical iniquity in Russia, Austria and Prussia to declare, after having used every sinister means to embroil the Polish affairs, and stir-up faction, that the Poles were unfit to be a nation, and as neighbors too troublesome.

<sup>3</sup> The idea which I have to express, would have prompted me, and the Latin word *Cæsareus* would have authorized me, to use the term *Cæsarean Sovereignty*. It is unquestionably preferable to imperial sovereignty, except that the English term *Cæsarean* has acquired a peculiar and distinct meaning, which might even have

dignity and healthful self-government. They may establish peace and police; they may silence civil war, but they also destroy these germs from which liberty might sprout forth at a future period. However long Napoleon the First might have reigned, his whole path must have led him farther astray from that of an Alfred, who allowed self-government to spring up, or respected it where he found it. We can never arrive at the top of a steeple by descending deeper into a pit.

Whatever Caesar was, he did not, at any rate, usher in a new and prosperous era, either of liberty or popular grandeur. What is the Roman empire after Caesar? Count the good rulers, and weigh them against the unutterable wretchedness resulting from the worst of all combinations—of lust of power, lust of flesh, cupidity and cruelty—and forming a stream of increasing demoralization, which gradually swept down in its course everything noble that had remained of better times.

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suggested the idea of a mordant pun. I have, therefore, given up this term, although I had always used it in my lectures. It will be observed that I use the term sovereignty in this case with a meaning which corresponds to the sense in which the word sovereign continues to be used by many, designating a crowned ruler. I hope no reader will consider me so ignorant of history and political philosophy, as to think I am capable of believing in the real sovereignty of an individual. If sovereignty means the self-sufficient primordial power of society, from which all other powers are derived—and unless it mean this we do not stand in need of the term—it is clear that no individual ever possessed or can possess it. On the other hand, it is not to be confounded with absolute power. My views on this important subject have been given at length in my Political Ethics, as I have said before.

The Roman empire did, undoubtedly, much good, by spreading institutions which adhered to it in spite of itself, as seeds adhere to birds, and are carried to great distances; but it did this in spite, and not in consequence of the imperial sovereignty.

How, in view of all these facts of Roman history and of Napoleon the First, the French have been able once more boastfully to return to the forms and principles of imperial sovereignty, and once more to confound an apparently voluntary divestment of all liberty with liberty, is difficult to be understood by any one who is accustomed to self-government. Whatever allowance we may make on the ground of vanity, both because it may please the ignorant to be called upon to vote *yes* or *no*, regarding an imperial crown, and because it may please them more to have an imperial government than one that has no such sounding name; whatever may be ascribed to military recollections—and, unfortunately, in history people only see prominent facts, as at a distance we see only the steeples of a town, and not the dark lanes and crowding misery which may be around them; whatever allowance may be made, and however well we may know that the whole could never have been effected without a wide-spread centralized government and an enormous army<sup>4</sup>—it still remains surprising to us that the French, or at least those who now govern, please themselves in the imperial forms of Rome, and in presenting popular absolutism as a desirable form

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<sup>4</sup> See paper on Elections in the appendix.

of democracy. As though Tacitus had written like a contented man, and not with despair in his breast, breathed into many lines of his melancholy annals!

Yet so it is. Mr. Troplong, now president, I believe, of the senate, said on a solemn occasion, after the sanguinary second of December, when he was descanting on the services rendered by Louis Napoleon: "The Roman democracy conquered in Cæsar and in Augustus the era of its tardy *avènement*."<sup>s</sup> If imperial sovereignty were to be the lasting destiny of France, and not a phase, French history would consist of a long royal absolutism; a short

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<sup>s</sup> A sepulchral inscription in honor of Massaniello had an allusion conceived in a similar spirit. I give it entire, as it probably will be interesting to many readers.

*Eulogium*

*Thomas Aniello de Amalfia*

*Cetario mox Cæsarea*

*Honore conspicuo*

*qui*

*Oppressa patria Parthenope*

*cum*

*Suppressione nobilium*

*Combustione mobilium*

*Purgatione exulium*

*Extinctione vectigalium*

*Proregis injustitia*

*Liberata*

*Ab his qui liberavit est peringrate occisus*

*Ætatis suæ anno vigesimo septimo, imperii vero*

*Decennio*

*Mortuus non minus quam vivus*

*Triumphavit*

*Tantæ rei populus Neapolitanus tanquam immemor*

*Posuit.*

struggle for liberty, with the long fag end of Roman history—the *avènement* of democracy in its own destroyer, the imperial sovereignty, but without the long period of Roman republicanism.

The same gentleman drew up the report of the senatorial committee to which had been referred the subject, whether the people should be called upon to vote Yes or No on the question: Shall the republic be changed into an empire? This extraordinary report possesses historical importance, because it is a document containing the opinion of such a body as the French senate, and the political creed of the ruling party. I shall give it, therefore, a place in the appendix. It contains the same views mentioned above, but spread over a considerable space, at times with surprising untenableness and inconsistency.

So little, indeed, has imperial sovereignty to do with liberty, that we find even the earliest Asiatics ascribing the origin of their despotic power to unanimous election. I do not allude only to the case of Dajoces, in Herodotus, but to the mythological books of Asiatic nations. The following extract from a Mongolian cosmogony, whose mythos extends, as will be seen, over a vast part of the East, is so curious and so striking an instance of “the *avènement* of democracy”—though not a tardy one—and so clear a conception of imperial sovereignty without a suspicion of liberty, as a matter of course, since the whole refers to Asia, that the reader will not be dissatisfied with the extract.

“At this time (that is after evil had made its appearance on earth) a living being appeared of great

beauty and excellent aspect, and of a candid and honest soul and clear intellect. This being confirmed the righteous possessors in their property, and obliged the unrighteous possessors to give up what they had unjustly acquired. Thereupon the fields were distributed according to equal measure, and to every one was done even justice. Then all elected him for their chief, and yielded allegiance to him with these words: We elect thee for our chief, and we will never trespass thy ordinances. On account of this unanimous election, he is called in the Indian language Ma-ha-Ssamati-Radsha; in Thibetian, Mangboi-b Kurbai-r Gjabbo; and in Mongolian, Olana-ergukdeksen Chagran (the many-elected Monarch)."<sup>6</sup>

"In the name of the people," commenced the decree of Louis Napoleon—the first he issued after the second of December, when he had made himself master of France, and in which he called upon all the French to state whether he should have unlimited power for ten years. If it was not their will, the decree said, there was no necessity of violence, for he would then resign his power. This was naive. But theories or words before the full assumption of imperial sovereignty are of as little importance as after it. Where liberty is not a fact and a daily recurring reality, it is no liberty. The word *Libertas*

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<sup>6</sup> The History of the East Mongols, by Ssanang Ssetsen Chang-saidshi, translated into German by I. J. Schmidt. I owe this interesting passage to my friend, the Rev. Professor J. W. Miles, who directed my attention to the work.



occurs very frequently on the coins of Nero, and most frequently *Fides Mutua*, *Liberalitas Augusta*, *Felicitas Publica*.

Why, it may still be asked, did the Cæsars recur to the people as the source of their power, and why did the civilians say that the emperor was legislator, and power-holder, inasmuch as the power of the Roman people, who had been legislators and power-holders, had been conferred upon them? Because, partly, the first Cæsars, at any rate the very first one, had actually ascended the steps of power with the assistance of some popular element, cheered on somewhat like a diademed tribune; because there was and still is no other real source of power imaginable than the people, whether it consist in positive gift or merely in acquiescence,<sup>7</sup> and because, as to the historical fact by which power in any given case is acquired, we must never forget that the ethical element and that of intellectual consistency are so inbred in man that, wherever humanity is developed at all, a constant desire is observable to make actions, however immoral or inconsistent, at least theoretically agree with them. No proclamation of war has ever avowed, I believe, that war was simply undertaken because he who issued the proclamation had the power and meant to use it *fas aut nefas*.<sup>8</sup>

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<sup>7</sup> As the words stand above, I own, they may be variously interpreted; but it would evidently lead me too far, were I to attempt a full statement of the sense in which I take them, which indeed I have done in my *Political Ethics*.

<sup>8</sup> The reader sufficiently acquainted with history will remember that the consul Manlius, when the Gallatians, a people in Asia

No matter what the violence of facts has been, however rudely the shocks of events have succeeded one another, the first that men do after these events have taken place is invariably to bring them into some theoretical consistency, and to give some reasonable account of them, at least in appearance. This is the intellectual demand ever active in man. The other equally active one is the ethical demand. No man, though he commanded innumerable legions, could stand up before a people, or even a part of them—perhaps not even before himself—and say: “I owe my crown to the murder of my mother, or to the madness of the people, or to slavish officers.” To appear merely respectable in an intellectual and ethical point of view, it requires some theoretical decorum. The purer the generally acknowledged code of morality, or the prevailing religion is, or the higher the general mental system which prevails at the time, the more assiduous are also those who lead the public events, to establish, however hypocritically, this apparent agreement between their acts and theory, as well as morals. It is a tribute, though impure, paid to truth and morality.

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Minor, urged that they had given no offence to the Romans, answered that they were a profligate people deserving punishment, and that some of their ancestors had, centuries before, plundered the temple of Delphi. Justin, the historian, says that the Romans assisted the Acarnanians against the Aetolians because the former had joined in the Trojan war, a thousand years before. But this principle does not act, even as a caricature, in politics only. What cruelties have not been committed *Pro majore Dei gloria*!

## CHAPTER XXXIII.

IMPERATORIAL SOVEREIGNTY CONTINUED. ITS ORIGIN  
AND CHARACTER EXAMINED.

It has been said in the preceding pages that imperial sovereignty must be always the most stringent absolutism, especially when it rests theoretically on the election of the whole, and that the transition from an uninstitutional popular absolutism to the imperial sovereignty is easy and natural. In the time of the so-called French republic of 1848, it was a common way of expressing the idea then prevailing, to call the people *le peuple-roi* (the king-people), and an advocate, defending certain persons before the high court of justiciary sitting at Versailles in 1849, for having invaded the chamber of representatives, and consequently having violated the constitution, used this remarkable expression, "the people" (confounding of course a set of people, a gathering of a part of the inhabitants of a single city, with *the* people) "never violates the constitution."<sup>1</sup>

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<sup>1</sup> Mr. Michel, on the 10th of November. I quote from the French papers, which gave detailed reports. Mr. Michel, to judge from his own speech, seems to have been the oldest of the defending advocates.

Where such ideas prevail, the question is not about a change of ideas, but simply about the lodgement of power. The minds and souls are already thoroughly familiarized with the idea of absolutism, and destitute of the idea of self-government. This is also one of the reasons why there is so much similarity between monarchical absolutism, such for instance as we see in Russia, and communism, as it was preached in France; and it explains why absolutism, having made rapid strides under the Bourbons before the first revolution, has ended every successive revolution with a still more compressive absolutism and centralism, except indeed the revolution of 1830. This revolution was undertaken to defend parliamentary government, and may be justly called a counter-revolution on the part of the people against a revolution attempted and partially carried by the government. It explains farther how Louis Napoleon after the second of December, and later when he desired to place the crown of uncompromising absolutism on his head, could appeal to the universal suffrage of all France—he that had previously curtailed it, with the assistance of the chamber of representatives. This phenomenon, however, must be explained also by the system of centralism, which prevails in France. I shall offer a few remarks on this subject after having treated of some more details appertaining to the subject immediately in hand.

This idea of the *peuple-roi* (it would perhaps have been more correct to say *peuple-czar*) also tends to explain the otherwise inconceivable hatred against the *bourgeoisie*, by which the French under-

stand the aggregate of those citizens who inhabit towns and live upon a small amount of property or by traffic. The communists and the French so-called democrats breathed a real hatred against the bourgeoisie; the proclamations, occasionally issued by them, openly avowed it; and the government, when it desired to establish unconditional absolutism in form as well as principle, fanned this hatred. Yet no nation can exist without this essential element of society. In reading the details of French history of the year 1848 and the next succeeding years, the idea is forced upon our mind that a vast multitude of the French were bent on establishing a real and unconditional aristocracy of the *ouvrier*—the workman.<sup>2</sup>

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<sup>2</sup> This error broke forth into full blaze at the indicated time, but it had of course been smouldering a long time before, and, as is customary, had found some fuel even in our country. In the year 1841, during the presidential canvass, a gentleman—who has since become the editor of a catholic periodical, and has probably changed his views—published a pamphlet in which he attacked individual property, and fell into the same error which is spoken of in the text above.

The author of the pamphlet, which was very widely distributed, found it of course impossible to draw the line between the workmen and those who are not, and I recollect that he did not even allow the superintendent of a factory to be a workman. I have treated of these subjects in detail in my *Essays on Labor and Property*, and believe that a Humboldt is a harder working "working man," not indeed than the poor weaver who allows himself but five hours rest in the whole twenty-four, but certainly a far harder working man than any of those physically employed persons who want to make their class a privileged order. The fact is simply this, that there is no toiling man, however laboriously employed in a physical way, that does not guide his efforts by some exertion of

If the imperial sovereignty is founded upon an actual process of election, whether this consist in a mere form or not, it bears down all opposition, nay all dissent, however lawful it may be, by a reference to the source of its power. It says: "I am the people, and whoever dissents from me is an enemy to the people. *Vox Populi vox Dei*. My divine right is the voice of God, which spake in the voice of the people. The government is the true representative of the people."

The eight millions of votes, more or less, which elevated the present French emperor, first to the decennial presidency and then to the imperial throne, are a ready answer to all objections. If private property is confiscated by a decree; if persons are de-

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the brain, and no mentally employed man that is not obliged to accompany his labor by some, frequently by a great deal of physical exertion. To draw an exact line between the two, for political purposes, is impossible. All attempts at doing so are mischievous. The hands and the brain rule the world. All labor is manual and cerebral, but the proportion in which the elements combine is infinite. So soon as no cerebral labor is necessary, we substitute the animal or the machine. In reading some socialist works, one would almost suppose that men had returned to some worship of the animal element, raising pure physical exertion above all other human endeavors. Humanity does not present itself more respectably than in the industrious and intelligent artisan, but every artisan justly strives to reach that position in which he works more by the intellect than by physical exertion. He strives to be an employer. The type of a self-dependent and striving American artisan is a really noble type. The author hopes he will count many an American operative among his readers; and if he be not deceived in this hope, he takes this opportunity to declare that he believes he too has a very fair title to be called a hard-working man, without claiming any peculiar civil privileges on that account.

ported without trial; if the jury trial is shorn of its guarantees, the answer is always the same. The emperor is the unlimited central force of the French democracy; thus the theory goes. He is the incarnation of the popular power, and if any of the political bodies into which the imperial power may have subdivided itself, like a Hindoo god, should happen to indicate an opinion of its own, it is readily given to understand that the government is in fact the people. Such bodies cannot, of course, be called institutions; for they are devoid of independence and every element of self-government. The present president of the French legislative corps found it necessary, on the opening of a late session, to assure his colleagues, in an official address, that their body was by no means without some importance in the political system, as many seemed to suppose.

The source of imperial power, however, is hardly ever what it is pretended to be, because, if the people have any power left, it is not likely that they will absolutely denude themselves of it, surely not in any modern and advanced nation. The question in these cases is not even whether they love liberty, but simply whether they love power—and every one loves power. On the one hand, we have to observe that no case exists in history in which the question, whether imperial power shall be conferred upon an individual, is put to the people, except after a successful conspiracy against the existing powers or institutions, or a coup-d'état, if the term be preferred, on the part of the imperial candidate; and, on the other hand, a state of things in which so great a

question is actually left to the people is wholly unimaginable. There may be a so-called interregnum during the conclave, when the cardinals elect a pope, but a country cannot be imagined in a state of perfect interregnum while the question is deciding whether a hereditary emperor shall be made. It is useless to pretend even such a thing, most especially so where the question is to be decided not by representatives, but by universal suffrage, and that, too, in a country where the executive is spread over every inch of the territory, and characterized by the most consistent centralism. The two last elections of Louis Napoleon prove the fact. Ministers, prefects, bishops, were openly and officially influencing the elections; not to speak of the fact that large elections on persons in power, which allow to vote only yes or no, have no meaning, as the history of France abundantly proves.<sup>3</sup> But how elections at present are managed in France, even when the question is not so comprehensive, may be seen from a circular addressed by the minister, Mr. de Morny,<sup>4</sup> to the prefects, previous to the elections for the first legislative corps. It is an official paper, strikingly characteristic, and I shall give a place to a translation of it in the appendix. We ought to bear in mind that one of the

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<sup>3</sup> See the Paper on Elections, in the appendix.

<sup>4</sup> Mr. de Morny is the *frère adultérin* of Louis Bonaparte, on the mother's side, queen Hortensia. He aided his half brother very actively in the overthrow of the republic, and the establishment of the empire. Mr. de Morny lost the ministry at the time when L. Bonaparte despoiled the Orleans family of their lawful property, and, it was believed, because the minister could not in his conscience sanction an act at once so unlawful and ungrateful.



heaviest charges against Mr. de Polignac, when tried for treason, was, that he had allowed Charles the Tenth to influence the elections.

The question, when such a vote is put to the people under circumstances which have been indicated, is at once: And what if the vote turn out No? Will the candidate, already at the head of the army, the executive, and of every branch; whose initials are paraded everywhere, and whose portrait is in the courts of justice, some of which actually have already styled themselves imperial, and who himself has been addressed Sire; who has an enormous civil list—make a polite bow, give the keys to some one else, and walk his way? And to whom was he to give the government? The question was not, as Mr. de Laroche-Jaquelin had proposed, Shall A or B rule us? Essentially this question would not have been better; but there would have been apparently some sense in it. The question simply was: Shall B rule us?—Yes or No. It is surprising that some persons can actually believe reflecting people may thus be duped.

The Cæsar always exists before the imperial government is acknowledged and openly established. Whether the prætorians or legions actually proclaim the Cæsar or not, it is always the army that makes him. A succeeding ballot is nothing more than a sort of trimmings of more polished or more timid times, or it may be a tribute to that civilization which does not allow armies to occupy the place they hold in barbarous or relapsing times, at least not openly so.

First to assume the power and then to direct the people to vote, whether they are satisfied with the act or not, leads psychologically to the same process often pursued by Henry the Eighth, and according to which it became a common saying: First clap a man into prison for treason, and you will soon have abundance of testimony. It was the same with the witch trials.

The process of election becomes peculiarly unmeaning, because the power already assumed allows no discussion. There is no free press.\*

Although no reliance can be placed on wide-spread elections, whose sole object is to ratify the assumption of imperial sovereignty, and when therefore it already dictatorially controls all affairs, it is not asserted that the dictator may not at times be supported by large masses, and possibly assume the imperial sovereignty with the approbation of a majority. I have repeatedly acknowledged it; but it is unquestionably true that generally in times of commotion, and especially in uninstitutional countries, minorities sway, for it is minorities that actually contend. Yet, even where this is not the case, the

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\* When the question of the new imperial crown was before the people of France, count Chambord, the Bourbon prince who claims the crown of France on the principle of legitimacy, wrote a letter to his adherents, exhorting them not to vote. The leading government papers stated at the time that government would have permitted the publication of this letter had it not attacked the principle of the people's sovereignty. The people were acknowledged sovereign, yet the government decides what the sovereign may read!

popularity of the Cæsar does in no way affect the question. Large, unarticulated masses are swayed by temporary opinions or passions, as much so as individuals, and it requires but a certain skill to seize upon the proper moment to receive the acclamation of them, if they are willing and consider themselves authorized to give away by one sudden vote, all power and liberty, not only for their own lifetime, but for future generations. In the institutional government alone, real public opinion is elaborated.

It sometimes happens that arbitrary power or centralism recommends itself to popular favor by showing that it intends to substitute a democratic equality for oligarchic or oppressive, unjust institutions, and the liberal principle may seem to be on the side of the levelling ruler. This was doubtless the case when in the sixteenth and seventeenth centuries the power of the crown made itself independent on the continent of Europe. Instead of transforming the institutions, or of substituting new ones, the governments levelled them to the ground, and that unhappy centralization was the consequence which now draws every attempt at liberty back into its vortex. At other times, monarchs or governments disguise their plans to destroy liberty in the garb of liberty. Thus James the Second endeavored to break through the restraints of the constitution, or perhaps ultimately to establish the catholic religion in England, by proclaiming liberty of conscience for all, against the established church. Austria at one time pressed apparently

liberal measures for the peasants against the Polish nobles. In such cases, governments are always sure to find numerous persons that do not look beyond this single measure, nor to the means by which it is attempted; yet the legality and constitutionality of these means are of great, and frequently of greater importance than the measure itself. Even historians are frequently captivated by the apparently liberal character of a single measure, forgetting that the dykes of an institutional government once being broken through, the whole country may soon be flooded by an irresistible influx of arbitrary power. We have a parallel in the criminal trial, in which the question how we arrive at the truth is of paramount importance with the object of arriving at truth.

On the other hand, all endeavors to throw more and more unregulated and unarticulated power into the hands of the primary masses, to deprive a country more and more of a gradually evolving character, in one word to establish more and more a direct, absolute, unmodified popular power, amount to an abandonment of self-government, and an approach to imperial sovereignty, whether there be actually a Cæsar or not—to popular absolutism, whether the absolutism remain for any length of time in the hands of a sweeping majority, subject, of course, to a skilful leader, as in Athens after the Peloponnesian war, or whether it rapidly pass over into the hands of a broadly named Cæsar. Imperial sovereignty may be at a certain period more plausible than the sovereignty founded upon divine right, but they are

both equally hostile to self-government, and the only means to resist the inroads of power is, under the guidance of providence and a liberty-wedded people, the same means which in so many cases withstood the inroads of the barbarians, namely, the institution—the self-sustaining and organic systems of laws.

## CHAPTER XXXIV.

## CENTRALIZATION. INFLUENCE OF CAPITAL CITIES.

WE have seen in how great a degree French centralism has produced an incapacity for self-rule, according to one of the most distinguished statesmen of France herself. This centralism, in conjunction with imperial sovereignty, has produced some peculiar effects upon a nation so intelligent, ardent, and so wedded to system as the French are. And before I conclude this treatise, I beg leave to offer a few remarks, which naturally suggest themselves, and are connected either with centralism or imperial sovereignty; both so prominent at this moment in France.

Centralism has given to Paris an importance which no capital possesses in any other country. The French themselves often say Paris is France; foreigners always say so; and to them as well as to those French people who desire to possess themselves of as much of all that French civilization produces, at one round, this is, doubtless, very agreeable and instructive. Paris is brilliant, as centralism altogether frequently is; Paris naturally flatters the vanity of the French; Paris stands with many peo-

ple for France, because they see nothing of France but Paris. Centralization appears most imposing in Paris—in the buildings, in demonstrations, in rapidity of execution, and in an æsthetical point of view. Upon a close examination of history, however, we shall find that it has been not only a natural effect of centralism, but an object of all absolute rulers over intelligent races, to beautify the capital and raise its activity to the highest point. The effect is remarkable. The government of king Jerome, of Westphalia—now again prince of France—was one of the most ruinous that has ever existed, and yet long after the downfall of that ephemeral kingdom, every disapproval of it was answered by a reference to the embellishment of Cassel, the capital.

Capital cities and residences of kings, and even petty princes, have in this respect the same effect which single large fortunes or single busy places have on the minds of the superficial, in point of political economy. They are palpable, and strike the mind, yet they prove nothing of themselves. There is not a war, however ruinous, that does not produce some gigantic gains of bankers, contractors, and able speculators. They are often pointed out to prove that a certain war has not been fatal to general prosperity. There have never existed greater fortunes than those of some princely Roman senators, with their latifundia, in the very worst periods of the Roman empire, amidst universal ruin, and when the country was fast declining to that state in which the tillers of the soil abandoned their farms, because unable to pay the taxes, and in which Italy, with the

utmost exertion of the government, was not able to raise an army against invading hordes.

Whenever we shall have executed our railway to the Pacific, nothing of it will be seen at one moment and by the physical eye, that differs from the rails of any other road, and the vulgar will be struck far more by a palace at Versailles, or a column of Trajan; unless, indeed, a pointing hand were hewn in granite, at San Francisco, with the words, To the Atlantic, and another at some Atlantic city, with the words, To the Pacific; and even then the real grandeur of the road would not be perceived by the physical eye.<sup>1</sup> And so it is with capitals.

We live in an age which has justly been called the age of large cities.<sup>2</sup> Populous cities are indispensable to civilization, and even to liberty, though I own that one of our problems yet to be solved is, how to unite the highest degree of individual liberty with order, in large cities.

But absorbing cities, cities on which monarchs are allowed to lavish millions upon millions of the national money, always belong to a low state of general national life, often to effete empires. The vast cities of Asia, imperial Rome and other cities prove it. On the other hand, it is an unfortunate state of things in which one city rules supreme, either

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<sup>1</sup> No one will charge the author, he trusts, with political iconoclasm, that has read his chapter on monuments in his *Political Ethics*.

<sup>2</sup> *The Age of Great Cities, or Modern Society viewed in its Relation to Intelligence, Morals and Religion*, by Robert Vaughan, D. D. London, 1843.



by an overwhelming population, as Naples, or by concentration, as Paris. Constant changes of governments seem almost inevitable, whether they are produced by the people, as in the case of Paris, or by foreigners, as in the case of Naples.

A comparison between Paris and London, in this respect, is instructive. London, far more populous, has far less influence than Paris; and London, incomparably richer, is far less brilliant than Paris. Monarchical absolutism and centralism strike the eye and strive to do so; liberty is brilliant indeed, but it is brilliant in history, and must be studied in her institutions.

Great as the influence of Paris has been ever since the reign of the Valois, it has steadily increased, and those who strove for liberty were by no means behind the others in their worship of the capital. This singular idolatry was actually acknowledged by several resolutions of the representatives of the people, during the late republic.

The intense influence of Paris, together with the wide-spread system of government, every single thread of which centers in Paris, is such that, in 1848, the republic was literally telegraphed to the departments, and adopted without any resistance from any quarter, civil or military, which cannot be explained by the often avowed horror of the French at shedding French blood, since blood was readily shed to elevate Louis Napoleon. The same causes made it possible for the republic, apparently so readily and unanimously adopted, to be with equal

readiness apparently changed by eight millions of votes into a monarchy.

It has already been admitted that centralism, by the very fact that it concentrates great power, can produce many striking effects which it is not in the power of governments on a different principle to exhibit. These effects please and often popularize a government, but there is another fact to be taken into consideration. Symmetry is one of the elements of humanity; systematizing is one of man's constant actions. They captivate and become dangerous, if other elements and activities equally important are neglected, or if they are carried into spheres to which they properly do not belong. The regularity and consistent symmetry, together with the principle of unity, which pervade the whole French government, charm many a beholder, and afford pleasure not unlike that which many persons derive from looking at a plan of a mathematically regular city, or from gardens architectonically trimmed. But freedom is life, and wherever we find life it is marked, indeed, by agreement of principles and harmony of development, but also by variety of form and phenomena, and a subordinate exactness of symmetry. The centralist, it might be said, mistakes lineal and angular exactness, formal symmetry and mathematical proportions, for harmonious evolution and unrestricted vitality. He prefers an angular garden of the times of Louis the Fourteenth to a living shady grove.

Centralism, and the desire to bring everything under the influence of government, or to do as far as possible everything by government, has fearfully

increased from the moment that the imperial absolutism was declared;<sup>3</sup> while, at the same time, a degree of man-worship has developed itself, which makes people at a distance almost stand aghast. The same hyperbolic, and, in many cases, blasphemous flattery, which reminded the observer, in the times of Napoleon the First, of imperial Rome, has been repeated since. No one who has attentively followed the events of our times stands in need of instances; they were offered by hundreds,<sup>4</sup> and of a character

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<sup>3</sup> According to the latest news even the dead are under the control of government, not in the sense of Sidney Smith, by paying taxes, but no one can any longer be buried in Paris except by a chartered company, standing under the close inspection of the police department.

<sup>4</sup> Churchmen and laymen, as is well known, vie with each other on such occasions. The blasphemous flattery offered by some dignitaries of the church to Napoleon the First was frightful. We have seen the same when there seemed to be a question who could bid highest in burning incense to the present new Cæsar. The Lord's prayer was travestied. The following "proclamation" is taken from the "Concorde de Seine et Oise," of October, 1852, because it is not one of the worst:

*"Town of Sévres. Proclamation of the Empire."*

"Inhabitants—Paris, the heart of France, acclaimed on the 10th of May for its emperor him whose divine mission is every day revealed in such a striking and dazzling manner. At this moment it is the whole of France electrified which salutes her savior, the elect of God, by this new title, which clothes him with sovereign power: 'God wills it,' is repeated with one voice—'vox populi, vox Dei.' It is the marriage of France with the envoy of God, which is contracted in the face of the universe, under the auspices of all the constituted bodies, and of all the people. That union is sanctified by all the ministers of religion, and by all the princes of the church. These addresses, these petitions, and these speeches, which are at this moment being exchanged between the chief of the state and

that would make the most hardy former tory-worship of the person that wore the crown appear as an innocent blundering; but we cannot pass over the fact that an infatuated yet large part of a nation have for the first time in history, so far as we know, called ideas after a man of action. "Napoleonic ideas" has become a favorite expression. Not only newspapers use this term—a late one condemned free-trade because "free-trade is no Napoleonic idea"—but men whom we have been accustomed to look upon with respect<sup>6</sup> have fallen into this infatuation. All

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France, are the documents connected with that holy union; every one wishes to sign them, as at the church he would sign the marriage-deed at which he is present. Inhabitants of Sèvres, as the interpreter of your sentiments, I have prepared the deed which makes you take part in this great national movement. Two books are opened at the Mairie to receive your signatures; one of them will be offered in your presence to him whom I from this day designate under the title of emperor. Let us hope that he will deign to accede to the supplications which I shall address to him in your name, to return to the palace of St. Cloud through our territory, by the gate of honor which we possess. The other book, which I shall present for the signature of the prince, will remain in your archives as a happy souvenir of this memorable epoch. Let all the population, without distinction, come, therefore, and sign this document; it sets forth that which is in your heart and in your will."

This document is accompanied by a formal proclamation, appropriately signed—"Ménager, mayor."

Plain dealing, however, obliges us to remember, along with such extravagances of foreigners, the repulsive flattery in which some individuals indulged when Mr. Kossuth was among us. Nor must we wholly forget the language of some editors at the time of general Jackson's administration. But these were erratic acts of individuals, and, however disgusting, were not officially received by government.

<sup>6</sup> Mr. Chevalier.

of us have heard of christian ethics, christian ideas and sentiments, but we have never heard of Carolingian, Frederician, Julian, Alexandrian, Gregorian or Lutheran ideas. It is a submission to a name, an individual—and an individual, too, be it observed, who distinguished himself as a man of action, which seems to indicate a singular want of self-reliance and self-respect.

Centralized governments can effect certain brilliant acts, but they are on this account seriously liable to fall into a method of carrying on public affairs, which, in the language of stage managers, is significantly called *Starring*, and which has the serious inconvenience of leading popular attention from solid actions to that which dazzles, from wholesome reality to mere brilliant ideas.

The elevation of Napoleon the Third may be referred in a measure to this error. Huzzajng crowds are never substantial indications of any opinion, whether the crowds are voluntary or subpoenaed. "Where are my enemies?" said Charles the Second when he re-entered London and passed through the crowd of his subjects. He had enough. Prince de Ligne tells us that, when Catharine travelled through Crimea, distant populations were carried to the roadside of the imperial traveller, to wait on her, in costumes delivered to them by the government, and to personate the inhabitants of show villages which had been erected in the background. These sham villages are typical. Still, we can believe that many persons rushed to see the present emperor when he travelled through France, before he made himself

emperor, because they really believed that which had been so often repeated—that Louis Napoleon “had saved society and civilization.” Now this is exactly an idea which belongs to the order that has been indicated.

It is founded upon the primary belief that if civilization is lost in France, it is lost for the entire world. It would certainly produce a very serious shock; but the French idea of one leading nation is an anachronism. It belongs to ancient times; the French easily fall into this error, because Paris really leads France. Civilization, however, would not be wholly lost even for France, should Paris be destroyed; or, if the contrary were the truth, what must we think of France?

Secondly, it is meant, I suppose, that had not Louis Napoleon taken the reins of absolute power, the socialists would have destroyed property, industry and individuality.

The fear which these people have inspired must have been very great, and doubtless the power of doing mischief is immense, in every individual, compared to that of doing good. Even an insect can cause a leak to a man-of-war; but to say that a single man—such a man and by such means—has been the savior of society, is at once so monstrous an exaggeration, and such an avowal of inability to act and to rely on one's self, that this hyperbole—if it be not altogether an error—would have led to no such results with any nation less accustomed to centralism, absolutism, and an absorbing government. All these

were necessary to make a nation so rapidly, and apparently good-humoredly, bend to all the exorbitant and insulting demands of absolutism, to which, unfortunately at this moment, the French nation seems to bow with a peculiar grace.

## CHAPTER XXXV.

## VOX POPULI VOX DEI.

THE maxim Vox Populi Vox Dei is so closely connected with the subjects which we have been examining, and it is so often quoted on grave political occasions, that it appears to me proper to conclude this work with an inquiry into the validity of this stately saying. Its poetic boldness and epigrammatic finish, its Latin and lapidary formulation, and its apparent connection of a patriotic love of the people with religious fervor, give it an air of authority and almost of sacredness. Yet history, as well as our own times, shows us that everything depends upon the question who are "the people," and that even if we have fairly ascertained the legitimate sense of this great yet abused term, we frequently find that their voice is anything rather than the voice of God.

If the term people is used for a clamoring crowd, which is not even a constituted part of an organic whole, we would be still more fatally misled were we to take the clamor for the voice of the deity. We shall arrive at this conclusion, that in no case can we use the maxim as a test, for, even if we call the people's voice the voice of God in those cases in



which the people demand that which is right, we must first know that they do so before we could call it the voice of God. It is no guiding authority; it can sanction nothing.

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"The chief priests, and the rulers, and the people," cried out all at once, "Crucify him, crucify him!" Were then "the rulers and the people" not the populus? their voice was assuredly not the vox Dei in this case? If populus means the constituted people speaking through the organs and in the forms of law, the case of Socrates arises at once in our mind. It was the people of Athens speaking by their constituted authorities that bade him drink the hemlock; yet it would be blasphemy to say that it was the voice of God that spoke in this case through the mouth of the Athenians. Was it the voice of the people, and, through it, the voice of God which demanded the sway of the guillotine in the first French revolution? Or was it the voice of God which made itself heard in 1848, when all punishment of death for political offences was abolished in France? Or is it the voice of God which through "the elect one of the people" demands, at the moment I am writing this, the re-establishment of capital punishment for high political offences? Or is it the voice of God that used so indefinite a term in law as that of political offences?

There are, indeed, periods in history in which, centuries after, it would seem as if really an impulse from on high had been given to whole masses, or to the

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<sup>1</sup> St. Luke, 23.

leading minds of leading classes, in order to bring about some gigantic changes. That remarkable age of maritime discovery which has influenced the whole succeeding history of civilization and the entire progress of our kind, would seem at first glance, and to many, perhaps, after a careful study of all its elements, as if a breath not of human breathing had given it motion and action. No person, however, living at that period would have been authorized to call the wide-spread love of maritime adventure the voice of God, merely because it was widely diffused. Impulsive movements of far greater extent and intensity have been those of error, passion and crime. It must be observed that the thorough historian often acts in these cases as the natural philosopher who finds connection, causes and effects where former ages thought they recognized direct and detached manifestations of a superior power, and not the greater attribute of admitting variety under eternal laws and unchanging principles.

When the whole of Europe seemed to be animated by one united longing to conquer the holy land, it appeared undoubtedly to the crusaders that the voice of the people was the voice of God. It seemed, indeed, as if an *afflatus numinis* breathed over the European land. Those, however, who now believe that the crusades were a great injury to Europe—and there are such—do not perceive the voice of God in this vast movement. They will perhaps maintain that it was not the people who felt this surprising impulse, but the chivalry, who by their unceasing petty feuds had developed a martial rest-

lessness which began to lack food, and thus threw themselves into distant enterprises, stimulated at the same time by a highly sacerdotal character which pervaded that age. To find out, then, whether it was the vox populi, would first require to find out whether it was the vox Dei, and, consequently, we are no better off with the maxim than without it.

I am under the impression that the famous maxim first came into use in the middle ages, at a contested episcopal election,<sup>2</sup> when the people, by apparent acclamation, having elected one person, another aspirant believed he had a better right to the episcopate on different grounds or a different popular acclamation. That the maxim has a decidedly medieval air no one familiar with that age will doubt. The middle ages are, indeed, characterized by the fact that all Europe was parcelled out, not in states, but under a political system of graduated and encapsulated allegiance; but where this system failed to reach a sphere with its many ramifications, the same age bore a conclamatory character, especially in the earliest times. When a king was elected it was by conclamation. The earliest bishops of Rome were elected or confirmed by conclamation of the Roman people. Elections by conclamation always indicate a rude or deficiently

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<sup>2</sup> For many years I have been under the impression that I had found this fact when studying the times of Abelard; but I must confess that all my attempts to recover the fact, when I came to write on this subject, have been fruitless. Sanderson, whom Mr. Hallam calls the most distinguished English casuist, treats of the maxim in his work *De Conscientia*. So I am informed by a learned divine. I have not seen the book.

organized state of things; and it is the same whether this want of organization be the effect of primitive rudeness or of relapse. Now the maxim we are considering has a strongly conclamatory character, and to apply it to our modern affairs is degrading rather than elevating them.

How shall we ascertain, in modern times, whether anything be the voice of the people? and next, whether that voice be the voice of God, so that it may command respect? For, unless we can do this, the whole maxim amounts to no more than a poetic sentence expressing the opinion of an individual, but no rule, no canon.

Is it unanimity that indicates the voice of the people? Unanimity in this case can mean only a very large majority. But even unanimity itself is far from indicating the voice of God. Unanimity is commanding only when it is the result of digested and organic public opinion, and even then, we know perfectly well that it may be erroneous and consequently not the voice of God, but simply the best opinion at which erring and sinful men at the time are able to arrive.

Mr. Say informs us that when the first cotton manufactures were introduced into France, petitions from all the incorporated large towns, from merchants and silk weavers, were sent to Paris, clamoring in vehement terms against the "ungodly calico prints." Rouen, now the busiest of all the French cotton manufacturing places, was among the foremost, and the petition of the united three corporations of Amiens ended thus: "To conclude, it is

enough for the eternal prohibition of the use of printed calicoes, that the whole kingdom is chilled with horror at the news of their proposed toleration. *Vox populi vox Dei.*" This might well be considered as sufficient to prevent every reflecting man from using the maxim. We now know that the cotton tissue has become one of the greatest blessings of our race, giving comfort, health and respectability to entire masses of men formerly doomed to tatters, filth and its fearful concomitants, typhus and vice; and we know too that cotton manufacture is one of the most lucrative branches of French industry.

Unanimity of itself proves nothing worth being proved for our purpose. In considering unanimity, the first subject that presents itself to us is that remarkable phenomenon called Fashion—a phenomenon wellnigh calculated to baffle the most searching mind, and which has never received the attention it deserves at the hands of the philosopher, in every point of view, whether psychological, moral, economical or political. Unassisted by any public power, by the leading minds of the age, by religion, literature or any concerted action, it nevertheless rules with unbending authority, often in spite of health, comfort and taste, and it exacts tributes such as no sultan or legislature can levy. While it often spreads ruin among producers and consumers, it is always sure to reach the most absolute czar and subject his taste. Though the head may wear a crown, Fashion puts her shears to its hair, if she has a mind to do so. Far more powerful than international law, which

only rules between nations, she brings innumerable nations into one fold, and that frequently the fold of acknowledged folly. How can we explain this stupendous phenomenon? It is not necessary to do so here. The fact, however, must be acknowledged. It is the most remarkable instance of unanimity, but will any one say that Fashion is a *vox Dei*? The very question would be irreverent were it not candidly made in a philosophical spirit.

Nor is the dominion of fashion restricted to dress and furniture, nor to the palate and minor intercourse. Bitter as the remark may sound, it is nevertheless true that there are countries void of institutions, where a periodical on political fashions might be published, with the same variety of matter as the *Petit Courier des Dames*.

There was a fearful unanimity all over Europe in the sanguinary and protracted period of witch trials, joined in by churchmen and laymen, protestant and catholic, Teuton, Celt, and Slavonic, learned and illiterate. If the fallacious and in some respects absurd "*Quod ab omnibus, semper, ubique*," ever seemed to find an application, it was in the witch-trial from the earliest times of history, and in all countries down to the time when very slowly it began to be no longer *ab omnibus, semper, ubique*. But was Sprenger's sad *Malleus Meleficarum* on that account the voice of God?<sup>3</sup> What fearful fanaticisms have not swept over whole countries with deplorable unanimity!

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<sup>3</sup> It has been calculated that near nine millions of human beings have been sacrificed by witch-trials in modern times.

The Romans were unanimous enough when they slaughtered the worshippers of that God whose authority is invoked to dignify the voice of men in the fallacious maxim. If the voice of the people were the voice of God, the voice of the people ought not only to be unchangeable, but there ought to be one people only. Two nations frequently clamor for war, and both, under the motto *Vox populi vox Dei*, draw the sword against each other.

A remarkable degree of unanimity prevails in all those periods of excited commercial speculation, such as under Law in France, the South Sea scheme in England, the railway mania we have seen in the same country, or the commercial madness in our land some fifteen years ago.

If we carefully view the subject of unanimity, we shall find that in the cases in which vast action takes place, by impelled masses—and it is in these cases that the maxim is invoked—error is as frequently the basis as truth. It is panic, fanaticism, revenge, lust of gain, and hatred of races that produce most of the sudden and comprehensive impulses. Truth travels slowly. Indeed all essential progress is typified in the twelve humble men that followed Christ. The voice of God was not then the voice of the people. What the ancients said of the avenging gods, that they are shod with wool,<sup>4</sup> is true of great ideas in history. They approach softly. Great truths always dwell a long time with small minorities, and the real voice of God is often that

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<sup>4</sup> *Dii lãneos habent pedes.*

which rises above the masses, not that which follows them.

But the difficulty of fixing the meaning of this motto is not restricted to that of ascertaining what is the voice of God. It is equally difficult to find out what is the voice of the people. If by the voice of the people be meant, as was stated before, the organically evolved opinion of a people, we do not stand in need of the motto. We know we ought to obey the laws of the land. If by the voice of the people be meant the result of universal suffrage without institutions, and especially in a large country with a powerful executive, not permitting even preparatory discussion, it is an empty phrase; it is deception, or it may be the effect of vehement yet transitory excitement, or of a political fashion. The same is true when the clamoring expression of many is taken for the voice of the people.

In politics as in other spheres it is never the loudest who are the wisest, though they are those who are heard and whom flatterers pretend to treat as the people and as the utterers of the voice of God. Governments frequently rule nations as some of the French theatres are ruled. Paid applauders, called claqueurs, force many a piece through a long series of performances, and it is these very governments of claqueurs that resort most frequently to the *Vox populi vox Dei*. Yet Mademoiselle Mars, one of the most distinguished French actresses that has ever played, was in the habit of saying, How much better we would play if we cared less for applause!

Another strong case showing that no dependence



can be placed upon the maxim, is that of proverbs. They are doubtless the voice of the people, and much wisdom many of them contain, but there are also many in favor of our worst passions and meanest dispositions.

The following rhymes are given by Mr. Trench in his *Lessons on Proverbs*, as "of an old poet."<sup>5</sup>

"The people's voice the voice of God we call;  
And what are Proverbs but the people's voice?  
Coined first and current made by public choice,  
Then sure they must have weight and truth withal."<sup>6</sup>

A very large class of proverbs is against peasants and the laboring classes; against women, lawyers, physicians—indeed against all the staple subjects of former satire.

Whoever wishes to give great importance to a general movement, or sincerely believes it to be truly noble, calls it the voice of God. Pope Pius IX, in his proclamation of the 30th of March, 1848, says, in speaking of the general and enthusiastic movement of the Italians for Italy and Independence: "Woe to him who does not discern the *Vox Dei* in this blast," &c. It cannot be supposed that he now considers that blast to have been the *Vox Dei*.

Sometimes the maxim is doubtless used in good

<sup>5</sup> I do not know whom Mr. Trench means.

<sup>6</sup> Which might lead to this syllogism:

Vox Populi Vox Dei,  
Proverbs are the voice of the people,  
Hence proverbs are the voice of God;  
There are many wicked proverbs,  
Ergo, &c. &c.

faith, just as the French sometimes use that favorite expression of theirs: The instinct of the masses, without reserve; but generally I think Vox populi vox Dei is used either hypocritically or when people have misgivings that all may not be right, pretty much in the same manner as persons say that an argument is unanswerable, when they have a strong foreboding that it may be very answerable.

Vox populi vox Dei has never been used in France so frequently as after the second of December, yet there are unquestionably thousands in that country who would find their religious convictions much bewildered, if they were obliged to believe that it was the voice of God which spoke through ballot boxes under the management of the most centralized executive in existence; and that the voice of the Deity requires a thousand intrigues among men to be delivered.

The doctrine Vox populi vox Dei is essentially unrepblican, as the doctrine that the people may do what they list under the constitution, above the constitution, and against the constitution is an open avowal of disbelief in self-government.

The true friend of freedom does not wish to be insulted by the supposition that he believes each human individual an erring man, and that nevertheless the united clamor of erring men has a character of divinity about it; nor does he desire to be told that the voice of the people, though legitimately and institutionally proclaimed and justly commanding respect and obedience, is divine on that account. He knows that the majority may err, and that he has

the right and often the duty to use his whole energy to convince them of their error, and lawfully to bring about a different set of laws. The true and stanch republican wants liberty, but no deification either of himself or others; he wants a firmly built self-government and noble institutions, but no absolutism of any sort—none to practise on others, and none to have practised on himself. He is too proud for the *Vox populi vox Dei*. He wants no divine right of the people, for he knows very well that it means nothing but despotic power of insinuating leaders. He wants the real rule of the people, that is the institutionally organized country, which distinguishes it from the mere mob. For mob is an unorganic multitude, with a general impulse of action.<sup>7</sup> Woe to the country in which political hypocrisy first calls the people almighty, then teaches that the voice of the people is divine, then pretends to take clamor for the true voice of the people, and lastly gets up the desired clamor. The consequences are fearful and invariably unfitting for liberty.

Whatever meaning men may choose, then, to give to *Vox populi vox Dei*, in other spheres, or, if applied to the long tenor of the history of a people, in active politics and in the province of practical liberty, it either implies political levity, which is one of the most mordant corrosives of liberty, or else it is a political heresy, as much so as *Vox regis vox Dei* would

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<sup>7</sup> The subject of Mobs has been enlarged upon in the Political Ethics.

be. If it be meant to convey the idea that the people can do no wrong, it is as grievous an untruth as would be conveyed by the maxim, the king can do no wrong; if it really were meant to be taken literally.

However indistinct the meaning of the maxim may be, the idea intended to be conveyed and the imposing character of the dictum, have, nevertheless, contributed to produce in some countries a general inability to remain in opposition—that necessary element of civil liberty. In them a sort of shame seems to be attached to him that does not swim with the broad stream. No matter what flagrant contradictions may take place, or however sudden the changes may be, there seems to exist in every one a feeling of discomfort, until he has joined the general current. To differ from the dominant party or the ruling majority, appears almost like daring to contend with a deity, or a mysterious, yet irrevocable destiny. To dissent is deemed to be malcontent; it seems more than rebellious, it seems traitorous; and this feeling becomes ultimately so general, that it seizes the dissenting individuals themselves. They become ashamed, and mingle with the rest. Individuality is destroyed, manly character is lost, and the salutary effect of parties is forfeited. He that clings to his conviction is put in ban as unnatural, and as an enemy to the people. Then arises a man of personal popularity. He ruins the institutions; he bears down everything before him; yet he receives the popular acclaim, and the voice of the

people being the voice of God, it is deemed equally unnational and equally shameful to oppose him.<sup>3</sup>

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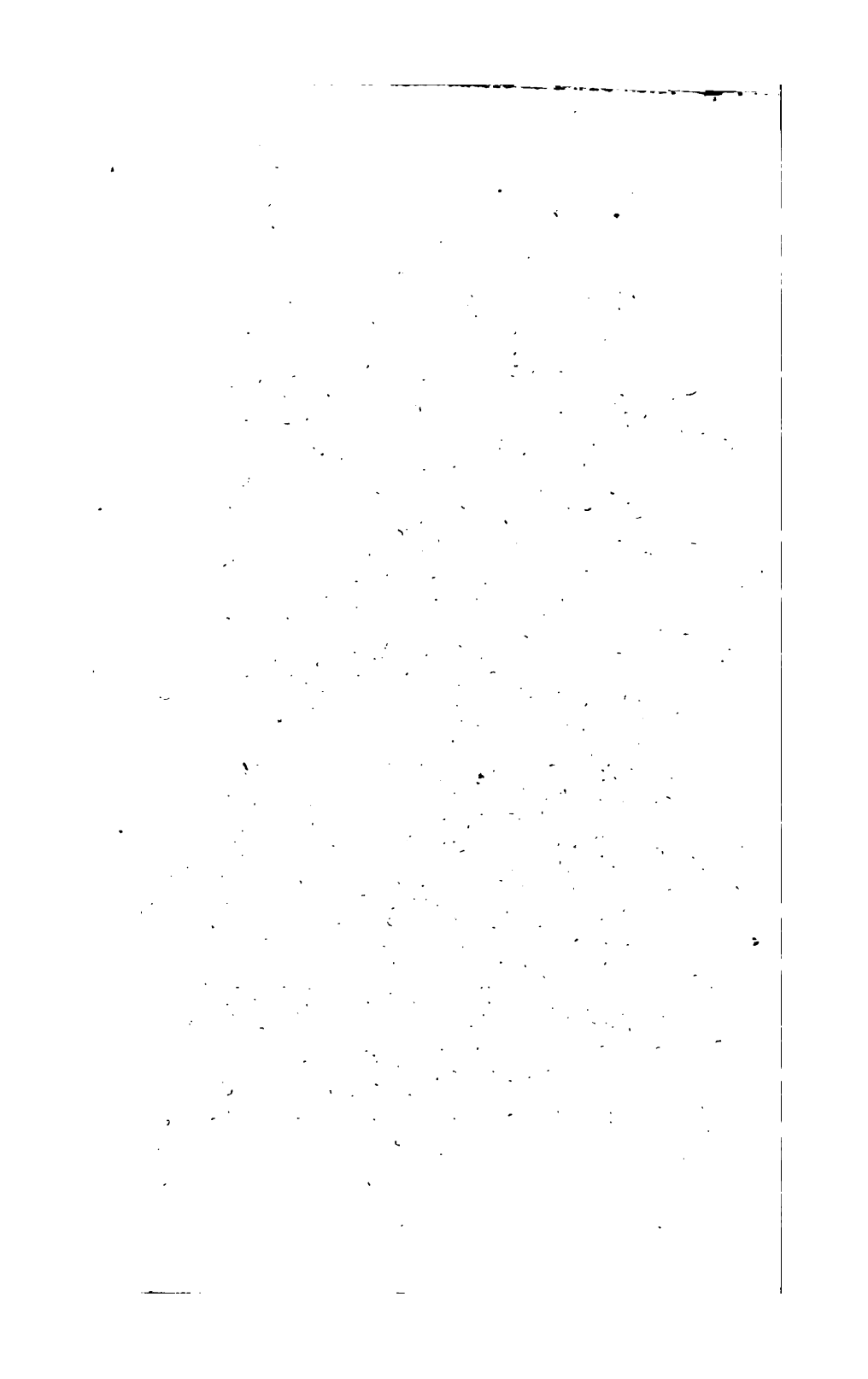
<sup>3</sup> The Paris journal, called *The Country*, informed the public at the time the present empire was established, that it had been raised to the dignity of an official paper to the imperial government. The announcement is made in that proclamatory and sententious style so much relished by the French, and in one of the paragraphs, standing by itself, "breaks" dividing it from the preceding and succeeding parts, it offers with a naïveté, which surpasses anything the writer can remember, this comforting assurance:

"In approaching power more closely, we shall not cease to have opinions."

The fact that it is the "journal of the empire," that the whole article is short, that every sentence seems to be well weighed by the editor, a writer of note, and that the declaration was made on a very important occasion, give to the whole a character which entitles us to take it as something more than a passing newspaper sentence.

When the maxim *Vox populi vox Dei* prevails, and governments change in rapid succession, it is a necessary result that there are hosts of turncoats. The French published in 1826, or thereabouts, a bitter satire on this herd of politicians, consisting of a work called *Dictionnaire des Girouettes*—literally translated, *Dictionary of Weathercocks*; but Anglicized, *Dictionary of Turncoats*. The names which headed the biographies in the book were succeeded by a number of symbolical weathercocks, equal to the number of political somersets of which the respective persons could boast. There was a fearful row of hieroglyphical vanes after some names. But in reading this droll and bitter account relating to a foreign nation, let us remember a certain passage in the bible where something is said about a mote in the eye.

## APPENDIX.



## APPENDIX I.

### A PAPER ON ELECTIONS, ELECTION STATISTICS AND GENERAL VOTES OF YES OR NO.

CONSCIENTIOUS and well informed men may possibly differ in opinion as to the question whether Cromwell was at any time the freely accepted ruler of the English people; whether he was gladly supported by the people at large and readily acquiesced in by a small minority; whether he imposed himself upon the country by the army and allayed opposition by the wisdom of his statesmanship; or whether he chiefly ruled by armed fanaticism. But it may be asserted without hesitation, that there is neither Englishman nor American, substantially acquainted with elections, whose judgment on this subject could be influenced in any degree, one way or the other, were he informed that Cromwell had received an overwhelming majority of votes all over England confirming him in his absolutism, after he had passed his famous act of 1656, by which he divided the British territory into twelve districts, each presided over by a major-general with absolute power over the inhabitants, all existing laws to the contrary notwithstanding. There is not an American or Englishman, I think, who believes that such a confirmatory vote could have added to his right, or that, had such an event taken place, it could have kept Richard Cromwell on the protectorial throne, or retarded the return of Charles the Second, a single day. And



the larger the majority for Cromwell should have been, the more we would now consider it as a proof of the activity exerted by the major-generals indeed, both in pressing and compressing, but no one of us would connect it in any way with a presumed popularity of Cromwell, or consider it as an index of the opinion which the people at large entertained of his repeated making and unmaking of parliaments.

A real or pretended result of such *ex post facto* votes may have a certain proclamatory value; it may be convenient to point to it and decline all farther discussion; "The People's Elect" may be a welcome formula for ribboned orators, expectant poets, or adaptive editors; but there is no intrinsic value in it. Votes of this sort have no meaning for the historian, at least so far as the subject voted on is concerned, and they have a melancholy meaning for the contemporary patriot. There seems to be a Nemesis eagerly watching these votes, and each time to prove, by events succeeding shortly after, how hollow they were at the time.

An election,<sup>1</sup> which takes place to pass judgment on a series of acts of a person, or to decide on the adoption or rejection of a fundamental law, can have no value whatever, if the following conditions are not fulfilled:

1. The question must have been fairly before the people for a period sufficiently long to discuss the matter thoroughly, and under circumstances to allow a free discussion. Neither the police restrictions of government, nor the riotous procedures of mobs, nor the tyranny of associations ought to prevent the formation of a well-sifted and duly modified average public opinion. The liberty of the press, therefore, is a *conditio sine qua non*. If this be not the case, a mere

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<sup>1</sup> There is no other term in our language, although it is obvious that these processes cannot be properly called elections. *Votings* would be more correct.

general opinion of the moment, a panic on the one hand, or a maddened gratitude, for real or imaginary benefits, of a multitude excited for the day or the period, may hastily and unrighteously settle the fate of generations to come, and passion, fear or vainglory may decide that which ought to be settled by the largest and freest exchange of opinions and the broadest reciprocal modification of interests. It requires time for a great subject to present itself in all the aspects in which it ought to be viewed and examined, and it requires time for a great public opinion to form itself—the more time, the vaster the subject is. All the laws regulating the formation of opinion in the individual apply with greater force to the formation of public opinion.

It is especially necessary that the army be in abeyance, as it were, with reference to all subjects and movements appertaining to the question at issue. The English law requires the removal of the garrison from every place where a common election for parliament is going on. Much more necessary is the total neutrality of the army in an election of the sort of which we now treat.

2. The election must be carried on by well organized election institutions, extending over small districts, because in that case alone can a really general voting be secured.

3. All elections must be superintended by election judges and officers independent of the executive or any other organized or unorganized power of government. The indecency as well as the absurdity and immorality of government recommending what is to be voted ought never to be permitted.

4. The election returns ought to be made so that they are not subject to any falsification. They must not be fingered by the government officers. This is especially important if the country labors under a stringent centralism in which

every civil officer avowedly acknowledges, and is, according to command, bound to acknowledge, no principle or law above the direct command of his immediate superior; in which the host of executive, administrative, police and semi-military officers form a compact body receiving its impulse of action exclusively from one centre; in which publicity is no pervading element of acts relating to the public interest; and in which no habits have yet been formed nor customs settled concerning the whole comprehensive election business.

5. He, or that power, which passes under judgment, ought to be in a position that, should the judgment turn against him, he can be believed to abide by the judgment. If not, the whole is nothing but a farce.

6. There must be really two things to choose between. If this is not the case, the whole procedure amounts to no more than what we familiarly call "Hobson's choice," on a gigantic scale.

If there be any reader who should object to this rule that, since we speak of elections, it is evident that there must be two things at least to select from, and that therefore this rule borders on the ridiculous, I would only say that history shows people have not always adopted it. There may be something ridiculous somewhere, but it is not in the rule. It would be ridiculous to lay down the rule that, if people invite others to dinner, there ought to be something to eat, only so long as invitations to empty tables are assumed not actually to have taken place.

7. The power claiming the apparent judgment ought not to have committed a criminal act, and then, as the law expresses it, insist on deriving benefit from his own wrong. Nor ought he, who pretends to present himself for judgment, stand in the position of a trustee, disputing the validity of the power by which nevertheless he has acted, and under

which he has accepted benefits. This is a common rule in all law, because it is common sense, and it is for the same reason a sound rule in politics.<sup>2</sup>

In addition to these rules, I may remind the reader of a fundamental truth concerning all elections and votes—a truth which is simply prescribed by common sense, and yet has often been set aside. A majority having voted for a subject is of no earthly value, unless the subject be of such a character that there can be, at the time, a public opinion about it. If there were, in a company of men, different opinions as to the time of the day, we cannot solve the difficulty by putting the question: "All who are in favor of its being now six o'clock will say Aye; those who are of the contrary opinion will say No." No majority of ever so vast a country can decide for me the chloroform question, or whether captain Ericsson's steam generator be or be not practical. And no majority, no matter how overwhelming, can be worth anything if there be not, in addition to a proper apparatus of evolving public opinion, of which we have spoken already, also one by which the true majority can be ascertained. It is an utter and constantly recurring error into which those that are unacquainted with the nature and the economy of liberty fall, to believe that what liberty requires is the ascertainment of incoherent votes on every question sprung upon society separately and incoherently. A French paper recently said that under certain circumstances the emperor Napoleon the Third would put the question of war to the universal suffrage of France. Of course I do not believe in the possibility of such an act, but I have mentioned the statement as an illustration. How can the French people at large decide on a question of

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<sup>2</sup> This has been well pointed out in the case of Louis Napoleon, by the Hon. A. P. Butler, United States senator for South Carolina.

war or peace, if France cannot debate the matter, cannot reflect on it? and what can a majority of votes on so grave a question mean, when the whole management of the vote, from first to last, is in the hands of that strongly concentrated government which puts the question?

I return to the seven requisites which I have pointed out.

If any one of these conditions be omitted, the whole election or voting is vitiated, and can in no way be depended upon. It will go with every experienced and truthful citizen, and pass with every serious historian, for nothing more than, possibly, for skilfully arranged deceptions of the unwary and very inexperienced. It is a question, indeed, whether these conditions can be frequently fulfilled, and whether it be possible in the nature of things to fulfil them at all, or any of them, in uninstitutional countries—in large countries enmeshed like a huge being by the close network of a bureaucratic mandarinism. They must, then, be resorted to as rarely as possible. In strictly organized police governments they have no value, except for the very purpose of deceiving, or of giving an apparently more firmly-based fulcrum for the lever of the power already existing.

Every one of my readers will agree with the necessity of the condition which has been stated as the first. There is the greatest difference between an accidental or momentary general opinion, and an organically-produced, well-settled, public opinion—the same difference which exists between a “decree of acclamation,” as those decrees in the first French revolution were called, which were proposed and forthwith adopted by a burst of feeling or a clamor of passions, and an extensive law which has first been discussed and rediscussed, called for and assailed in papers, pamphlets, meetings and institutions, and then, after long and patient debate, passed through the whole sifting and purposely re-

tarding, repetitious and revisionary parliamentary process. Real public opinion on public matters of a truly free people under an institutional government is generally the wisest master to which the freeman can bow; general opinion is worth nothing as a political truth. It may be correct; it may be vicious, as a thousand rumors show, and public rumor is general opinion. This subject of public and merely general opinion has been largely discussed in the Political Ethica.

When Cromwell had dissolved parliament, and even dissolved the famous council of state, in spite of Bradshaw's opposition, we are informed that addresses of gratulation and thanks reached him from all parts of England, just as they were crowded upon L. N. Bonaparte after the second of December, 1851. We cannot judge whether they expressed the opinion of the majority; for in politics, as in common life, it is the noisy that are heard and make themselves observed, while the majority and more substantial people are silent and overlooked; but, for argument's sake, we will grant that those addresses to Cromwell expressed the opinions, the views, the feelings of the majority of the nation at the moment. Even in this case they expressed nothing more than the existing general feeling, not the public opinion of England, as successive events very soon proved.

To seize upon loud and demonstrative general opinion and feeling of a part of the people while compressing the public opinion of the whole, is a frequent means of successful tyranny. It was the way the first French convention frequently managed things, and Danton knew it well. He acknowledged it.

As to the second and subsequent conditions which have been enumerated, the following observations may prove of interest. Numerous and extensive inquiries, referring to the

United States as well as to Europe, and some of which I propose to give to the reader, have proved to me certain instructive facts relating to the statistics of popular elections. I do not treat in this paper of the voting in assemblies of trustees, of representatives or boards.

I must also remark that I shall always use the term election for direct elections, in which the voter votes directly upon the question at issue, and not for a person who will have the ultimate right of the direct vote; either for a person or on a measure. The election of our presidents was intended to be a double election, and in form it continues to be such; for we elect electors. But it is well known that the election has long since become virtually a direct one, so far as the individual votes express the desire of the voters, because the persons voted for as electors declare beforehand for whom they shall vote in case they are made electors, and after being elected electors they do not become members of a deliberative body in which the question of the presidential election is discussed.\*

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\* This knowledge of the vote which an elector will give does of course not affect the result. Each elector represents a majority and a minority, but his vote can only be cast for one candidate. Nevertheless, that which is called the popular vote indicates a proportion between the presidential candidates very different from that which appears from the official votes of the electors. For instance, the popular vote at the last presidential election stood:

For Pierce . . . . .	1,504,471
“ Scott . . . . .	1,283,174
“ Hale . . . . .	148,851

and the votes of the electors stood

For Pierce . . . . .	254
“ Scott . . . . .	42

So that the popular vote stood:

Pierce to Scott as 182 to 100.

But the votes of the electors:

Pierce to Scott as 605 to 100.

Where the double election is introduced as an active principle, it deprives elections of much, and often of all interest, and is frequently resorted to for this very purpose, by governments which do not feel sufficiently strong to refuse the claims of the people to a share in the government, yet desire to defeat the reality of such a share.

The following, then, are the positions which experience seems fully to bear out:

The more exclusive the privilege of voting is, the smaller is the number of qualified voters who abstain from voting; and the largest number of abstinents occurs where universal suffrage is freely left to itself, and not interfered with by the executive.

The smaller the number of qualified voters, the smaller is also the number of abstinents.

So soon as the number of qualified voters exceeds five or six hundred, the number of abstinents will be at least twenty-five per centum.

The larger the number of qualified voters, voting upon the same question or persons, and under one and the same electoral system, the larger is also the number of abstinents.

The larger the area over which one and the same election or voting extends, the larger is the proportion of abstainers.

When there are three fairly supported candidates, the total number of votes polled is larger than when there are but two candidates, all other things being equal.

The whole number of polled votes, compared to the number of qualified voters, does not necessarily indicate the interest a community may take in a measure or person. Whenever people feel perfectly sure of the issue, there are many who abstain because their votes will not defeat the opponent; and many others abstain, because their candidate will be elected at any rate.

If the number of qualified voters (voting exactly upon



the same question or person) exceeds several thousands, one-half of it is generally a fair number for the actual voters; two-thirds show an animated state of things, and three-fourths are evidence of great excitement. It will be observed that the words: Voting exactly upon the same question or person—are a necessary qualification of these positions. Although an election all over England may turn upon free trade or protection, yet, if it be a parliamentary election, so that these questions appear only represented in the respective candidates, it is clear that this would not be an election extending over the area of England, in the sense in which the term is taken here, or in which we take it when we speak of our presidential election. Voting upon men generally draws out more votes than voting upon measures themselves.

Popular votes upon measures to be expressed by *yes* or *no* are wholly fallacious, unless this vote be the last act of a long and organic process; for instance, if a new constitution has been prepared by a variety of successive acts, and is ultimately laid before the people with the question, Will you, or will you not have it?

Popular votes in a country with an ample bureaucracy of a centralized government, on questions concerning measures or persons in which the government takes a deep interest, and by elections the primary arrangements of which are under the direction of the government, that is, under the executive, must always be received with great suspicion. It is a fact well worthy of remembrance, that the French people have never voted *no*, when a question similar to that which was settled, as it is called, by the election of December, 1851, was placed before them. In the year 1793, in the years III, VIII and XIII similar appeals were made, and the answer was always *yes*, by majorities even greater than that on which Louis Napoleon Bonaparte rests his ab-

solutism. When a *senatus consultum* raised Napoleon the First to the imperial dignity, and the people were appealed to, there were in the city of Paris 70 noes and 120,947 ayes, and in all France 2,500 noes against 3,572,329 ayes. A vote of *yes* or *no* becomes especially unmeaning when the executive seizes the power by a military conspiracy, and then pretends to ask the people whether they approve of the act or not.

From the best authorities on the Athenian government, for instance Bockh's *Political Economy of Athens*, and Tittman's *Political Constitutions of Greece*, under the head of Ostracism, we see that the common vote, polled by the Athenians, was about 5,000 (*Thucydides* viii. 72) out of from 20,000 to 25,000 qualified voters. Six thousand votes were considered the largest amount. They were required, therefore, for extraordinary cases, such as ostracism, or for anything that was against established law, or related to individuals only. Six thousand Athenian votes thus practically corresponded to our two-thirds of votes requisite for some peculiar cases, purposely removed beyond the pale of a simple majority, that is at least one more than one-half of the voters. Here, then, we have one-fourth of qualified voters, usually voting, although the voting took place in one and the same city by voters, the great majority of whom lived in the city.

Some writers have doubted whether six thousand votes, upon the whole, were necessary for ostracism and other peculiar cases, or six thousand votes in favor of the measure. I have no doubt that the first was the case. Plutarch distinctly says that one of the persons proposed was always exostracized, provided six thousand votes had been cast. (*Aristides* i. 7.) The same passage seems to prove that, if six thousand votes, altogether, had been cast, he who had the plurality of votes was banished; for, there were fre-

quently several persons proposed for ostracism, or citizens knew that they were prominent, and therefore liable to fall within the ostracophory. Ostracism was a purely political institution, resorted to by democratic absolutism to clip prominences, and keep the hedge on a level. It was no punishment, and until Hyperbolus, a low fellow, was exostracised, it added to the reputation of a citizen.

That there were many abstainers from voting in Athens, we know from the fact that on the one hand the lexiarchi sent their *toxotes* before them to mark with red-powdered cords the white garments of those who tarried, so that the thirty judges, presided over by the lexiarchi, might properly fine them. In this, then, the Athenians resembled the early inhabitants of New England, who punished abstaining from voting or *neglecting to send a written vote*.<sup>4</sup>

On the other hand, we know that every Athenian of lawful age (*viz.* twenty or eighteen) received three oboli for attending a popular assembly. This reward was called *eclesiasticon*.

Why there should have been at Athens so many more abstainers than generally in modern times, may be explained, probably, on the ground that many citizens were habitually absent as soldiers, and that Athens was a direct, untempered democracy. Where the democratic absolutism visibly appears every day in the market, people get tired of it. Besides, the reason which frequently induces so many of our best people from voting, the unwillingness to leave business, must have operated very strongly in Athens, when voting was so frequent and common. Let us imagine Boston or New York as an unmitigated democratic city-state, calling every other day for the meeting of the citizens; does any

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<sup>4</sup> See the Laws of New Plymouth, published by Authority, Boston, 1836, pp. 41 and 128.

one believe that the most constant voters would come from the workshops and the ship-wharves rather than from the tipling shops and filthy lanes of vice?

I have stated already that I have directed my inquiries to election statistics for many years, and over a very large and variegated space. The reader will admit that I can give a few instances only.

In the year 1834, there were in France no more than 171,015 electors; yet 129,211 only were polled at the different electoral colleges, that is only 75 out of 100 qualified voters availed themselves of their privilege. So there were in 1837 in the same country 198,886 qualified voters, and 151,720 votes were polled, which makes 76 of 100.

It will be remembered how small a number of citizens compared to the whole population were entitled to vote. The number of qualified voters at each electoral college was very restricted, and the voters formed a privileged class, compared to the other citizens.

The January number of the Edinburgh Review of 1852 contains a list of sixty-four English election districts, with the numbers of registered or qualified voters, and of the actually polled votes in each, at the last general election. The districts, whose qualified voters amount to less than one thousand, have been separated by me from those which possess more than one thousand. The average number of voters of the first class were 500, and 25 per centum on an average abstained from voting. The average number of qualified voters of the other class was between 2 and 3,000, and of them 42 per centum abstained. So that, if there be about 500 voters, only 75 in a hundred go to the poll; if there be about 2,500, only 58 in a hundred do so.

This is the more striking if it be considered that one thousand entitled voters is after all a very small number compared to those to which we are accustomed, and that far

the greater part of the elections given in the mentioned table are town elections or elections with the most easily accessible polls.

After the chief part of this paper had been written, a very striking fact came to corroborate the results at which I had arrived. The *Edinburgh Review* for October, 1852, contains an article on Representative Reform, in which there is "A Table showing the Number of Counties and Boroughs in England, Wales and Scotland, in which Contested Elections have taken place in the year 1852." Where an election afterwards contested takes place, it will be allowed that generally there must be great excitement. All voters are brought up over whom the candidates or their agents have any influence. Yet it appears from this table "that the registered voters in all the contested places reached 507,192, while those who recorded their votes did not exceed 312,289, or about 60 per cent. of the whole." This is very remarkable, for out of 175 places or counties, whose elections were contested, 46 only numbered 3,000 qualified voters or more.

The whole election to which all these statistics refer was that between the adherents to the administration of earl Derby, and those who considered it an incumbrance to the country. The contest was between Free Trade and Protection, and, I suppose, the English would plainly call it an excited election.

I pass over to instances not less striking, belonging to our own country.

According to detailed official documents, giving the number of qualified voters in every township in Massachusetts, and the number of votes actually polled during the election of the governor of that state in 1851, an election of unusual excitement, there were 182,542 persons entitled to vote,

and 131,187 votes actually received. This gives less than three out of four qualified voters, or less than 75 in a hundred. If we consider that Massachusetts is no extensive country; that it is more densely peopled than France, having 127.40 inhabitants to the square mile, while France has only about 125; that the roads are good and numerous; that the people are well trained in the whole election business; and that, as it has been stated, the excitement was very great, it furnishes us with a striking piece of evidence that the electoral barometer will hardly ever rise above 75 in a hundred.

There cannot be a more deeply interesting election than that which took place in the year 1851, in South Carolina, in which the palpable question was, shall or shall not the state secede from the Union? The political existence of the state formed the issue. On that occasion 42,755 votes were polled, which, taking one-fourth of the white population as the number of qualified voters, would show that about two-thirds only of those who had a right to vote actually did vote, or that 66 out of a hundred went to the poll.

Connecticut, a small and densely peopled state, sent, at the very excited election of 1852, about 75 or 76 out of each hundred voters to the poll. The calculation has been made from the official election returns, and taking one-fourth of the population as entitled to vote, which I have found to be the average number, where universal suffrage exists.

These instances might be greatly multiplied from statistical materials collected by me. I may only add the proportion of abstainers from our presidential elections since 1828. I have estimated the number of qualified voters by calculating, for the election year, the white population, according to the annual increments given by Mr. Kennedy, the first superintendent of the United States Census for

1850, and dividing that number by four.<sup>5</sup> I have called the real voters in the table *votants*, and the qualified voters simply *voters*.<sup>6</sup>

	White population.	Number of votes cast.	Proportion of votants to voters.
1828	10,537,378	1,160,418	0.44
1832	11,169,616	1,290,468	0.46
1836	12,117,968	1,501,298	0.50
1840	14,189,895	2,402,659	0.67
1844	15,469,287	2,702,546	0.69
1848	17,154,551	2,874,712	0.67
1852	20,027,899	2,936,896	0.58

<sup>5</sup> In dividing by four I reduce the number of qualified voters in the United States too much, as will appear from the following table, abstracted from the American Census of 1850, and kindly furnished me by Mr. De Bow, at present superintendent of the census:

States.	Aggregate population.	Total males 20 years of age and over.	Ratio to the whole population.
Massachusetts	994,514	280,623	3.54
Rhode Island	147,545	40,563	3.63
Connecticut	370,792	104,855	3.53
Pennsylvania	2,311,786	572,284	4.04
Ohio	1,980,329	473,501	4.18

This gives an average ratio of 3.784. But this table shows the proportion of white males of twenty years and upwards, while a person acquires the right of voting with his twenty-first year only. It will be, therefore, pretty correct, if I take one-fourth of the whole white population. In several states colored persons go to the polls. If they were counted, it would reduce the proportion of actual voters to the number of qualified voters; but I am willing to take one-fourth only.

<sup>6</sup> I am aware that, apparently, *Votare* has not been used in Low Latin for voting. Du Cange says that *Votum* was used in the middle ages for suffrage, but *Votare* for *Vovere*, *Spondere*. As it is,

It is necessary to take into consideration that in the whole south of the United States voting is a right of a privileged class, and that the proportion of abstainers is probably much smaller than it would be otherwise.

Against this calculation, however, so uniform in England, here and in France in former times, we have the vote of seven millions and a half for Mr. Bonaparte in 1852, when France was asked whether she approved of his breaking through oath and pledge, and of his proffered despotism, annihilating not only her constitution, which indeed was more than a frail one, but all the progress she had made in representative government, all her liberties, and all her civil dignity, and submitting her fortunes and all to a ruler who, never having been a soldier, tells civilized France that the history of armies is the history of nations, that responsible ministers are nothing but incumbrances, and that France desires a government which receives its whole impulse from one man.<sup>7</sup>

The statement which the government of the president of France officially published regarding the election which surrendered everything to the unchecked sway of the despot was thus :

Voted Yes . . . . .	7,489,216
Voted No . . . . .	640,737
Annulled votes . . . . .	36,820
Did not vote at all . . . . .	372,599
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	8,489,372

however, no uncommon case in the English language to have a noun and an adjective which is not derived directly from the former but from an intermediate though "missing" verb; which would be derived from the noun, did it exist, I feel sure the reader will permit me to use the term *Votant*, in a language in which brevity is often considered to cover logical and etymological sins.

<sup>7</sup> See the preamble to the constitution proclaimed by Louis Napoleon.



Whatever may be thought of the suspiciously small number of noes, I do not believe that there is a man living who knows anything of elections, and who at the same time is ready to accept the given number of abstinentes as a correct statement. According to the official number, between three and four persons only in one hundred abstained from voting, or were prevented by illness, absence from home, old age and the like, from doing so—a number utterly incredible, and which, it must be believed, would have been allowed to appear much larger had the officials who managed the whole business been acquainted with the usual number of abstinentes. The minister of state, Mr. Persigny, stated himself, in a circular letter to the prefects at a later period, that there were about eight millions of voters in France. This agrees pretty well with the common rule of taking about one-fourth of the whole population as the number of qualified voters where universal suffrage exists. There must then have been a great deal of manipulation within that number. This is further proved when we consider that, according to the official reports of the commissioners, whom the chief of the French state sent into the departments to see who of the political prisoners might be pardoned, many thousands were actually in prison at the time of the general election. Colonel Espinasse reports that in the departments of the Lot and Garonne, and the Eastern Pyrenees, there were 30,000 affiliated socialists, and in the department of the Hérault 60,000. In three departments alone 90,000 disaffected persons. If they voted, they must have been forced by the police to vote for the coup d'état: if they did not vote, what becomes of the given number of abstinentes? But there is another fact which shows the falsification of the statement, either by actually falsifying the numbers, or by forcing people to give the desired vote, or by both.

Algeria is not so directly under the influence of the police, nor could the statement concerning that colony be so easily falsified. Accordingly we have the following: Out of 68,000 voters (the army included) 50,000 abstained; 5,735 voted for L. N. Bonaparte, and 6,527 against him. Eighteen thousand only seem to have voted out of 68,000, not even 29 in 100.

I think this will sufficiently show how little reliance can be placed upon such a vote in a centralized country, and how futile it is to found any right or pretension upon it. Votes, without liberty of the press, have no meaning; votes, without liberty of the press and with a vast standing army, itself possessing the right to vote, and considering itself above all law, have a sinister meaning; votes, without an unshackled press, with such an army, and with a compact body of officials, whose number, with those directly depending upon them, or upon government contracts, amounts to nearly a million, have no meaning, whether he who appeals to the people says that he leaves "the fate of France in the hands of the people," or not.

This paper was written, with the exception I have mentioned, after the vote on the coup d'état had been given. Since then, the plebiscitum, making Louis Napoleon emperor, has been added.

The vote of the people on the question: Shall, or shall not, Louis Napoleon Bonaparte assume the imperial crown? is officially stated to have been thus:

The number of electors inscribed in the departments, is	9,843,076
The number of the land and naval forces	360,352
Total of voters	10,203,428

This number is thus distributed :—

Having voted yes . . . . .	7,824,189
Having voted no . . . . .	253,115
Votes void on some account or other . . . . .	63,326
Abstinentes . . . . .	2,062,798
Total . . . . .	<u>10,203,428</u>

This shows a very different result from the vote on the coup d'état. It gives twenty-five abstinentes in a hundred; but there are other points not easily understood. Of thirty-one persons, one only voted no. This is a state of harmony to which people of the Anglican tribe, with all their calmer temper, we venture to say, have never yet attained. It is equally inexplicable how, of a population, which, in 1851, amounted to 35,781,628, there can be, in the year 1852, as many as 10,203,428 authorized to vote, or males above twenty-one years old. The fourth part of 35,781,628 is only 8,945,407; and, if a fourth part is correct, there would be 1,258,021 unaccounted for. Nor can we forget, here, the immense number of persons, who, according to official reports, are at any given moment in the prisons of France. These, too, must be deducted.

I add, in conclusion, the statement of a Paris paper, which gives a different account, so far as that city is concerned.

In Paris, the number of abstinentes were :

In 1848, for the presidential election . . . . .	0.25
In 1851, for the ratification of the coup d'état, and the election of the presi- dent for ten years . . . . .	0.20
In 1852, for the imperial crown . . . . .	0.14

Only about one-half as many abstained from voting, *fas*

*aut nefas*, when the empire was to be re-established, as abstained in the excited times of the republic, when there were several candidates.\*

I do not believe that direct money-bribery exists in France to any great extent. Universal suffrage, it would seem, would preclude the possibility. But indirect bribery, by promises of promotion, or allowing shares in profitable undertakings, and, above all, intimidation, positive or indirect, I believe to have existed in the largest possible extent. We may certainly assume that every government officer, or person connected in some way with government, is worth his four or five votes at least—which he will direct as he in turn is directed to do by his superiors, or he loses his place. Then, we must take into account the influence of the priests in rural communities, or of the bishops in general. They openly exerted themselves, by word and letter, in favor of the present emperor.

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\* On the 10th of December, 1848, when the first French president, for four years, was voted for:

There were polled . . . . .	7,327,845
Of which: For Louis Napoleon . . . . .	5,434,226
For General Cavaignac . . . . .	1,448,197
“ Ledru Rollin . . . . .	376,119
“ Lamartine . . . . .	17,910
“ Changarnier . . . . .	4,700
Lost Votes . . . . .	12,600

France contained, in the year 1846, 35,400,486 inhabitants; consequently, in 1848, there were about 9,000,000 of authorized voters; and 7,327,845 having voted, about 80 in 100 went to the poll, according to this statement. Yet it must be supposed that the eagerness to go to the ballot-box was, in that year, much greater than after the coup d'état.

## APPENDIX II.

## A PAPER ON THE ABUSE OF THE PARDONING POWER.

THIS paper was originally a report. I had been appointed by a meeting of the Friends of Prison Discipline, without being present, the chairman of a committee, which was requested to report to the next meeting on "The Pardoning Privilege and its Abuse." The following was the result of this appointment. The legislature of the State of New York did me the honor of publishing it as a document; but it was printed so incorrectly, the subject is of such vital interest to a people who desire to live under the supremacy of the law, and the abuse continues in many parts of our country to so alarming an extent, that I do not hesitate here to reproduce the paper.

The pardoning privilege consists in the authority partially or wholly to remit the penalty which, in the due and regular course of justice, has been inflicted for some offence. A pardon is always an act of frustrating that common justice which has been established by law as the best means of protection; a nullification of legal justice. It is the only power in modern politics, in which the supremacy of the law is acknowledged as the primary condition of liberty, that can be compared in any degree to the veto of the ancient tribune.<sup>1</sup> It is

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<sup>1</sup> An inaccuracy of terms has in the case of the veto power created much confusion. The ancient tribune had the privilege of

an irregular power, depending upon irresponsible individual will. We ought, therefore, clearly to be convinced of its necessity; and if this can be proved, we ought to inquire whether so extraordinary a power must not be guarded by proper limitations, especially if it should be found that it is liable to be seriously and even alarmingly abused.

In order to understand more fully the whole subject, it will not be amiss if we endeavor to obtain a view of the origin of this power, and to see why it is that everywhere we find it as an attribute of the chief executive power; whether this fact must be attributed to any inherent characteristics, or to incidental circumstances.

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vetoing, and a so-called vetoing power being ascribed to the chief magistrate of modern constitutional States, people are apt to confound the two, and attack or defend them on common grounds. Yet the two have nothing in common. The Roman tribune had a real veto. He could prohibit an entire law, or a single operation of it; he could stop the building of a public fabric, or veto an officer from doing his duty, or a general from leaving Rome for the army. But the modern veto has nothing to do with the law once passed; it amounts to nothing more than the withholding of one necessary ingredient to pass a bill into a law. In governments where the crown has the concurrent or sole initiative, either house, whose consent is necessary in order to make a law, may be said to have the veto power against the crown with the same propriety with which we call the power, in our president, of withholding his approval a vetoing power. The president can never interrupt the operation of a law once made a law. In the case of pardoning, however, the power actually amounts to a tribunal veto. There the executive, or whoever may possess the pardoning privilege, actually stops the ordinary operation of the law. A man has been laboriously tried and sentenced according to the course minutely laid down by the law, and another power steps in, not according to a prescribed course or process of law, but by a pure privilege left to his own individual judgment, and says: I prohibit; and the due and regular course of law is interrupted accordingly. This is vetoing power.

When all government is yet mixed up with the family relations, and the individual views of the ruler alone prevail, he pardons, as a matter of course, whenever he sees proper and feels impelled so to do; but developed despotism over extensive states takes a different view. Fear of insecurity and suspicion of disobedience to the commands of the despot often lead the ruler to fence himself in with a strict prohibition of applications for pardon. That which a wise people does for virtuous purposes by a constitution, namely, the establishing, in calm times, of rules of action for impassioned periods, distrusting their own power of resisting undue impulses, and thus limiting their power, the despot does from fear of his own weakness, and therefore limits his own absolute power that he may not be entrapped into a pardon of disobedience. Chardin<sup>2</sup> tells us that in his time it was, in Persia, highly penal to sue for pardon for one's self or for another person; the same was a capital offence under the Roman emperors—at least under the tyrants among them, who form the great majority of the fearful list. Still it is clear that the last and highest power, the real sovereign (not only the supreme) power, must include the power of pardoning. As in Athens the assembled people had the right of remitting penalties,<sup>3</sup> so does the civil law acknowledge the privilege in the emperor who was supposed to be the sovereign, and acknowledged as the source of all law. Christianity confirmed these views. The mercy of the Deity is one of its chief dogmas; mercy, therefore, came also to be considered as one of the choicest attributes of the ruler, who on the one hand was held to be the vicegerent of God, and on the other the sovereign source of law and justice; nor can it be denied that, in times when laws were yet in a very

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<sup>2</sup> Voyage en Perse. London, 1686—1715.

<sup>3</sup> Demosthenes against Timocrates.

disordered state, the attribute of mercy in the ruler, and the right of pardoning flowing from it, was of great importance, and, upon the whole, probably of great benefit to the people. The fact that the pardoning power necessarily originated with the sovereign power, and that the rulers were considered the sovereigns, is the reason why, when jurists came to treat of the subject, they invariably presented it as an attribute indelibly inhering in the crown. The monarch alone was considered the indisputable dispenser of pardon; and this again is the historical reason why we have always granted the pardoning privilege to the chief executive, because he stands, if any one visibly does, in the place of the monarch of other nations, forgetting that the monarch had the pardoning power not because he is the chief executive, but because he was considered the sovereign—the self-sufficient power from which all others flow; while with us the governor or president has but a delegated power and limited sphere of action, which by no means implies that we must necessarily or naturally delegate, along with the executive power, also the pardoning authority.

Although the pardoning power has always existed, and has been abandoned by ultra despotism for the sake of despotism itself, yet the abuse to which it easily leads, and the apparent incongruity which it involves, have induced many men of deep reflection, in ancient as well as in modern times, to raise their voices against it: of whom we may mention Plato and Cicero<sup>4</sup> among the ancients, and Pastoret,<sup>5</sup> Servin, Filangieri, and the benevolent Beccaria among the moderns. The latter, the pioneer of penal reform, and one of the benefactors of mankind, has the following remarkable passage:<sup>6</sup>

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<sup>4</sup> Cicero in Verrem 7.

<sup>5</sup> Des Lois Penales.

<sup>6</sup> Crimes and Punishments, chap. 46, on Pardons; English Translation, 1807.



“As punishments become more mild, clemency and pardon are less necessary. Happy the nation in which they will be considered as dangerous! Clemency, which has often been deemed a sufficient substitute for every other virtue in sovereigns, should be excluded in a perfect legislation where punishments are mild, and the proceedings in criminal cases regular and expeditious. This truth may seem cruel to those who live in countries where, from the absurdity of the laws and the severity of punishments, pardons and the clemency of the prince are necessary. It is, indeed, one of the noblest prerogatives of the throne; but at the same time a tacit disapprobation of the laws. Clemency is a virtue which belongs to the legislator, and not to the executor of the laws; a virtue which ought to shine in the code, and not in private judgment. To show mankind that crimes are sometimes pardoned, and that punishment is not a necessary consequence, is to nourish the flattering hope of impunity, and is the cause of their considering every punishment inflicted as an act of injustice and oppression. The prince, in pardoning, gives up the public security in favor of an individual, and by ill-judged benevolence proclaims a public act of impunity. Let, then, the legislator be tender, indulgent, and humane.”

Among the truths of this passage there are some errors, the exhibition of which will at once lead us to the consideration whether the pardoning power, having already been admitted as an extraordinary and super-legal one, be necessary at all in a well and liberally constituted government, or ought to be suffered in a community which acknowledges the sovereignty of the law. Beccaria says that clemency should be excluded in a perfect legislation, and that pardon is a tacit disapprobation of the law. This is erroneous. No legislation can ever be perfect in the sense in which it is taken here, namely, operating in all cases, in the same

manner toward exactly the same end, for which the legislator has enacted the law; because the practical cases to which the laws apply are complex, and often involve conflicting laws; because the legislator, though he were the wisest, is but a mortal with a finite mind, who cannot foresee every combination of cases; because the changes of society, things, and relations necessarily change the effect produced by the same laws; and because the law-maker cannot otherwise than cast the rules of action, which he prescribes, in human language, which of itself is ever but an imperfect approximation to that which is to be expressed.

Laws cannot, in the very nature of things, be made abstract mathematical rules; and so long as we live on this earth, where we do not see "face to face," where mind cannot commune with mind except through signs which have their inherent imperfections, cases must frequently occur in which the strict and formal application of the law operates against essential justice, so that we shall actually come to the conclusion that, in a country in which the *sovereignty* of the laws is justly acknowledged, we stand in need of a conciliatory power to protect ourselves against a *tyranny* of the law, which would resemble the bed of Procrustes, and would sometimes sacrifice essential justice as a bleeding victim at the shrine of unconditional and inexorable law itself. It is to these cases, among others, that the adage of the jurists themselves applies: *Summum jus, summa injuria*. We take it then for granted on all hands, that, justice being the great end of all civil government, and law the means to obtain it, the pardoning power is necessary in order to protect the citizen against the latter, whenever, in the peculiar combination of circumstances, it militates with the true end of the state, that is, with justice itself. But it is equally true that the supremacy of the law requires that the extraordinary power of pardoning

be wielded in the spirit of justice, and not according to individual bias, personal weakness, arbitrary view, or interested consideration; a truth which is the more important in our country, because the same principles which make us bow before the law as our supreme earthly ruler, also bring the magistrate so near to the level of the citizen that he who is invested with the pardoning power is exposed to a variety of influences, individual and political, which have a powerful, and often, as practice shows, an irresistible effect, although there is no inherent connection between them and the cases to which the pardon is applied—influences, therefore, which in this respect are arbitrary or accidental. All arbitrariness, however, is odious to sterling freedom in general, and the arbitrary use of the pardoning power and its frequency produce the most disastrous consequences in particular.

It unsettles the general and firm reliance on the law, an abiding confidence in its supremacy, and a loyal love of justice.

It destroys the certainty of punishment, which is one of the most important and efficacious elements in the whole punitive scheme; and it increases the hope of impunity, already great, in the criminally disposed, according to the nature of man and the necessary deficiency even of the best contrived penal systems.

It endangers the community, since it is perfectly true what the prince of poets, in his great wisdom, has said:

‘Mercy is not itself, that oft looks so;

Pardon is still the nurse of second wo.’

It interferes most effectually with the wise objects of reform which our penitentiary systems aim at; for all men, practically acquainted with their operation, are agreed that reform never fairly begins in a convict before he has

calmly made up his mind to submit to the punishment, and so long as a hope of pardon leads his thoughts from the prison cell to the anticipated enjoyment of undue enlargement—a phenomenon easily to be accounted for upon psychological grounds.

It induces large numbers of well-disposed persons, male and female, from a superficial feeling of pity, to meddle with cases of which they have no detailed knowledge, and with a subject the grave importance of which has never presented itself to their minds.

It largely attracts to the community, in which the pardoning power is known to be abused, criminals from foreign parts where such an abuse does not exist; it imports crime.

It makes every sentence, not pardoned, an unjust one; for, in matters of state, every act should be founded on right and equal justice.<sup>7</sup> No one, therefore, has the right, whatever his power may be, to extend a favor to one without extending it to all equally situated, and, consequently, equally entitled to the favor. The doctrine of Dr. Paley, of "assigning capital punishment to many kinds of offences, but inflicting it only upon a few examples of each kind," which he actually calls one of the "two *methods* of administering penal *justice*," amounts to revolting monstrosity if practically viewed, and to an absurdity in a philosophical and scientific point of view.

It adds, with the very commonly annexed condition of

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<sup>7</sup> Lord Mansfield is reported justly to have remarked to George III., who wished to save the Rev. Dr. Dodd from the gallows, to which he had been sentenced for forgery: "If Dr. Dodd does not suffer the just sentence of the law, the Perreaus may be said to have been murdered." Holliday's *Life of Lord Mansfield*, London, 1797, p. 149. The Perreaus were apothecaries of very high standing, but had been hanged for forgery, in spite of the most weighty petitions.

expatriation, the flagrant abuse of saddling, in an inhuman, unchristian, and unstatesmanlike manner, neighboring communities with crime, to which the people, whose sacred and bounden duty it was to punish it, were too weak and negligent to mete out its proper reward.<sup>8</sup>

And it places an arbitrary power in the hands of a single individual, or several individuals, in states where all arbitrary power is disclaimed, and allows them by one irresponsible act to defeat the ends of toilsome, costly, and well-devised justice and legislation, putting the very objects of civil government to naught.

We do not theorize on this subject. All the disastrous effects of the abuse of the pardoning power, whether inherent in the power itself, when unlimited by proper restrictions, or arising out of a state of things peculiar to ourselves, have shown themselves among us in an alarming degree, and are in many parts of the country on the increase.

For the proof of this evil state of things we appeal to every one in our whole country who has made penal matters the subject of earnest inquiry; we appeal to the fact that, for a long series of years, the official reports of persons connected with prisons and penitentiaries, and of legislative committees, have teemed with complaints of the mischievous effects of the pardoning power; we appeal to the daily papers, near and far, and to recent occurrences in one of our most prominent states, where pardons have been granted to bloodstained criminals of the most dangerous, persevering, and resolute sort, without even the least indication of their reform, after a short time of imprisonment, which had

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<sup>8</sup> This unhallowed abuse has been raised into a law by Sir George Gray's Expatriation Law, passed in 1847, according to which convicts who behave well shall be pardoned after the lapse of two-thirds of the imprisonment to which they had been originally sentenced, *provided* they will leave the country.

already been substituted for capital punishment; we appeal to the statistics, whenever they have been collected, from official documents, on this melancholy subject; and, lastly, we appeal to the presentments of grand juries in several states of our Union, in which the frequency of pardons under some governors has been called by the severe yet merited name of nuisance.

So long ago as the year 1832, Messrs. de Beaumont and de Tocqueville showed, in their work on the penitentiary system in the United States,<sup>9</sup> by documents and statistical tables, the frightful abuse of the pardoning power in the United States in general, and the additional abuse, naturally resulting from the circumstances, that pardon is more liberally extended to those convicts who are sentenced to a long period of imprisonment, or for life, than to less criminal persons. We refer especially to the 2d part of the 16th note of the Appendix, page 232 of the translation. We are aware that in some, perhaps in many states of the Union, the pardoning power has been used more sparingly since that time; but it will be observed that there is no security against a return to the former state of things; nor is the effect of pardoning, when it is rare, yet abused in a few glaring cases, which attract universal notice, less injurious; for instance, when the member of a wealthy or distinguished family is pardoned, although guilty of a well-proved heinous crime, or when men are pardoned on political grounds, although they have committed infamous and revolting offences. Such cases have a peculiar tendency to loosen the necessary bonds of a law-abiding and law-relying community, which has nothing else, and is proud of having nothing else, to rely upon than the law.

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<sup>9</sup> Translated, with many additions, by Francis Lieber, Philadelphia, 1863.

Many years ago Mr. M. Carey said, in his *Thoughts on Penitentiaries and Prisons*: "The New York committee ascertained that there are men who make a regular trade of procuring pardons for convicts, by which they support themselves. They exert themselves to obtain signatures to recommendations to the executive authority to extend pardon to them by whom they are employed. And in this iniquitous traffic they are generally successful, through the facility with which respectable citizens lend their names, without any knowledge of the merits or demerits of the parties. Few men have the moral courage necessary to refuse their signatures when applied to by persons apparently decent and respectable, and few governors have the fortitude to refuse."

To this statement we have now to add the still more appalling fact, which we would pass over in silence if our duty permitted it, that but a short time ago the governor of a large state—a state amongst the foremost in prison discipline—was openly and widely accused of having taken money for his pardons. We have it not in our power to state whether this be true or not; but it is obvious that a state of things which allows suspicions and charges so degrading and so ruinous to a healthy condition of public opinion, ought not to be borne with.<sup>10</sup> It shows that, leaving

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<sup>10</sup> While these sheets are passing through the press, the papers report that the governor of a large state has pardoned thirty criminals, among whom were some of the worst character, at one stroke, on leaving the gubernatorial chair. What a legacy to the people! Lord Brougham said that the only aim of counsel for the prisoner was to get him clear, no matter what the consequences might be. If all the lawyers acted on this dictum, and all the executives as the mentioned governor, Justice might as well shut up her halls, and the people save the expenses which they incur for the administration of justice. It is paying too dear for a farce, which is not even entertaining.

the pardoning privilege, uncontrolled in any way, to a single individual, is contrary to a substantial government of law, and hostile to a sound commonwealth.<sup>11</sup>

A very interesting paper, relating to the subject of pardon, was furnished in the year 1846 by the Secretary of State, of Massachusetts, and published by the house of representatives of that commonwealth. The paper is, of itself, of much interest to every penologist; but, when we consider that Massachusetts justly ranks amongst the best governed states of our Union, its value is much enhanced; for we may fairly suppose that the abuse of the pardoning power exists in many of the other states in no less a degree. In many, indeed, we actually know it to exist in a far greater and more appalling degree.

From this document,<sup>12</sup> we have arrived at the following results:

There were imprisoned in the state of Massachusetts, from the year 1807, inclusive, to the month of February, 1847, in the state prisons, convicted, 3,850.

Of these were pardoned, before the term of imprisonment expired, 460. So that of the whole were pardoned 12 per cent., or every eighth convict.

The average time of remaining in prison (of these 460), compared to the time of their original sentence, amounted to 65 per cent. In other words, they remained in prison but two-thirds of the time of imprisonment imposed upon them by the law of the state.

Of the 460 pardoned convicts, there had been originally sentenced to the imprisonment of ten years, or more, the

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<sup>11</sup> In some of the worst governments, as those of Charles II., James II., and Louis XV., pardons were sold, but not by the pardoning ruler. It was the mistresses and courtiers who carried on the infamous traffic, though the monarchs knew about it.

<sup>12</sup> House of Representatives, of Massachusetts, 1846, No. 63.



number of 49. And the time which these convicts had actually remained in prison, compared to the terms of their original conviction, amounts to 60 per cent. ; so that a criminal sentenced to ten years, or more, had a better chance of having his imprisonment shortened, than those sentenced to a period less than ten years, in the proportion of about six to seven—in other words, while the less guilty was suffering a week's imprisonment, the prisoners of the darkest dye suffered six days only.

There were committed for life, by commutation of sentence, and still farther pardoned at a later period, from 1815 to 1844 inclusive, seventy-five. The average time they actually remained in prison was a fraction over seven years. So that, if we take twenty-five years as the average time of a sentence of imprisonment for life, we find that they remained in prison but little over one-fourth of the time which had been allotted to them, in consequence of a first pardon, (twenty-five per cent.,) or the executive substituted seven years' imprisonment for death decreed by law. There were, altogether, committed for life by commutation of sentence, fifteen. And, as we have seen that five of these were farther pardoned, we find that one-third of the whole were pardoned (thirty-three per cent.). It does not appear how many criminals were sentenced to death, and what proportion, therefore, had their sentences commuted to imprisonment for life.

The abuse of pardoning in the state of Massachusetts has, however, much decreased during the latter part of the period through which the mentioned report extends; for, according to a table published in the able and instructive third report of the New York Prison Association, (N. Y.) 1847, page 41 of the report of the Prison Discipline Committee, we find that from 1835 to 1846, there was pardoned in Massachusetts one convict of 1,804; while our statement

shows that in the period from 1807 to 1846 every eighth convict was pardoned.

We beg leave to copy the chief result of the table just mentioned.<sup>28</sup>

<sup>28</sup> While the work was passing through the press, a document, published by the Massachusetts convention to amend the state constitution, reached the writer. It contains "A List of Pardons, Commutations and Remissions of Sentence, granted to Convicts by the Executive of the Commonwealth for the ten years including 1843 and 1852." Unfortunately this important paper, which contains the names of the persons, sentences, number of years sentenced, number of years remitted, and the crimes, does not give any classifications, summings-up or comparisons with the number of sentences and unremitted punishments. It only exhibits the following recapitulation for 10 years from 1843 to 1852:—

Full Pardons . . . . .	36
Remissions . . . . .	819
Restorations . . . . .	103
Commutations . . . . .	35
Total . . . . .	483

This paper will doubtless be made the basis of very instructive statistical calculations, and it is greatly to be desired that other states would follow. As it is, I am incapable of giving at this moment any other information. It would require other documents, which I have not about me. My remarks are not intended to reflect on the gentleman who has drawn up the paper; for it appears that the convention ordered the paper on the 18th of June, and on July 5th it was handed in. There was then no time to collect the materials for comparisons such as I have alluded to. What is now most important to know is the sum total of what sentences for what crimes were chiefly remitted or pardoned; for what reasons, what proportion pardons, &c., bear to unremitted sentences, for what crimes and what duration these sentences were inflicted, of what countries the pardoned, &c., convicts were, and what proportion the pardoned, &c., short sentences bear to pardoned, &c., long sentences or death.

*Table showing the pardons in the following prisons in one or several years from 1845 to 1846.*

Vermont,	one convict pardoned of	5.87	convicts.
Maine,	" "	20.74	"
New Hampshire,	" "	4.56	"
Connecticut,	" "	36.50	"
Massachusetts,	" "	18.04	"
Virginia,	" "	33.31	"
Maryland,	" "	41.00	"
Sing Sing,	" "	21.25	"
Auburn,	" "	17.83	"
Eastern Penitentiary,	" "	20.37	"
Western Penitentiary,	" "	6.43	"
Mississippi,	" "	10.81	"
Kentucky,	" "	8.50	"
District of Columbia,	" "	87.00	"
Ohio,	" "	11.31	"
Rhode Island,	" "	18.00	"

If we take the above list as a fair representation of the whole United States, we shall find that one convict of 26.33 is pardoned. But we fear that this would not be very correct; nor must it be believed that any average *number* fairly represents the average *mischief* of the abuse of pardoning. Although there be but very few convicts pardoned in a given community, yet incalculable mischief may be done by arbitrarily or wickedly pardoning a few prominent and deeply stained criminals, as the average temperature of a place may turn out very fair at the end of a year, while, nevertheless, a few blasting night-frosts may have ruined the whole crop.

It ought to be kept in mind that, in all calculations of probability, averages must be taken with peculiar caution in all cycles of facts in which a peculiarly high or low state

of things produces effects of its own, differing not only in degree but also in kind from the effects which result from the more ordinary state of things. In these cases averages indicate very partial truth only; or cannot be taken as an index of the desired truth at all. The effects of these maxima or minima are not distributive, and being-effects of a distinct class they cannot be counteracted by other facts in the opposite direction. This applies to moral as well as physical averages, and before we apply ourselves to averages we must distinctly know whether the elements we are going to use stand in the proper connection with the nature of the result at which we desire to arrive.<sup>14</sup>

The abuse then exists, and exists in an alarming degree. The question arises, how is it to be remedied?

In trying to answer this question, we would preface that we are well aware that, unfortunately, the pardoning power is, in almost all states of our confederacy, determined by

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<sup>14</sup> A few examples may illustrate the truth too often forgotten: No farmer can determine the fitness of a given climate for the culture of a certain plant from the mean heat of the summer or the mean cold of the winter, for the mean heat does not indicate whether the weather is uniform or violently changeable; the mean interest at which money may have been obtainable in the course of the year does not indicate the truth, unless we know that it has not been peculiarly low at some periods and extraordinarily high at others; the general criminality of a community cannot be calculated from the percentage of crime, unless we know that there has not been a peculiarly disturbing cause; for instance, one man who has murdered half a dozen of people in a comparatively small community; and the mischief produced by pardons cannot be calculated by the average percentage alone, if we do not know that among these pardons there were not some peculiarly arbitrary or peculiarly hostile to the ends of justice. A wholesale pardon may be warranted by the truest principles, and a single arbitrary pardon may shock the whole community.

their constitutions, and cannot be changed without a change of these fundamental instruments. The object of the present paper, however, is not to propose any political measure. We shall treat the subject as a scientific one, and an open question, irrespective of what can or may be done in the different states in conformity with existing fundamental laws. It is necessary, before all, to know what is the most desirable object to be obtained. After this has been done, it will be proper for each party concerned to adopt that practical course which best meets its own peculiar circumstances, and to settle how near its own means allow to an approximation to the desirable end.

Many vague things have been asserted of the pardoning power by writers otherwise distinguished for soundness of thought, because they were unable to rid themselves of certain undefined views and feelings concerning princes and crowns. Some have maintained that the pardoning privilege can be justified only in the monarchy, because the monarch combines the character of the legislator and executive, while Montesquieu wishes to restrict the right to the constitutional monarch alone, because he does not himself perform the judicial functions. All these opinions appear to us visionary and unsubstantial. There is nothing mysterious, nothing transcendental in the pardoning power. The simple question for us is, Why ought it to exist? If it ought to exist, who ought to be vested with it? What are its abuses, and how may we be guarded against them?

We have already seen that doubtless the pardoning power ought to exist :

That there is no inherent necessity that it ought to exist in the executive, or in the executive alone :

That a wide-spread abuse of the pardoning power exists, and has existed at various periods :

That the abuse of the pardoning power produces calamitous effects :

That the executive in our country is so situated that, in the ordinary course of things, it cannot be expected of him that he will resist the abuse, at least that he will not resist it in many cases :

And that the chief abuse of the pardoning power consists in the substitution of an arbitrary use of power or of subjective views and individual feelings, for high, broad justice, and the unwavering operation of the law, which ought to be freed from all arbitrariness.

We know, moreover, that all our constitutions, as well as the laws of England, actually restrict the pardoning power in some cases ; for instance, regarding fines to be paid to private parties or impeachments ; and in most of our states the executive is not invested with the right of pardoning treason, which can only be done by the legislature.<sup>15</sup> In others, again, the governor has no authority to pardon capital punishment before the end of the session of that legislature which first meets after the sentence of death has been pronounced ; and in other states he has only the power of respiting the capitally condemned criminal until the meeting

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<sup>15</sup> The Constitution of the late French Republic of 1848 has this provision :

"Art. 55. He (the President of the Republic) shall possess the right of pardon, but he shall not have the power to exercise the right until after he has taken the advice of the Council of State. Amnesties shall only be granted by an express law. The president of the republic, the ministers, as well as all other persons condemned by the High Court of Justice, can only be pardoned by the National Assembly."

I do not consider it desirable that the pardoning power be given or imposed upon a political body already existing for other purposes, as in this case to the Council of State ; but I have cited this provision to show that the French at that time did not consider the limitation of the pardoning power in the executive unfavorable to popular liberty.

of the legislature. It is obvious that no specific reason has induced our legislators to give the pardoning power to the executive. It was rather left where they happened to find it, or they placed it by analogy, and not in consideration of any intrinsic reasons.<sup>16</sup>

If it be true that pardon ought to be granted only in cases in which essential justice demands it *against* the law, or for very specific and peculiar reasons—for instance, if a convict, sentenced to a short imprisonment, is so feeble in health, that, no proper hospital existing, the incidental consequences of imprisonment would be infinitely severer than the law intended the punishment to be<sup>17</sup> (and is not this

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<sup>16</sup> A remarkable proof of this fact seems to have been afforded by the late Constituent Assembly of the State of New York; for, so far as we are aware, there was no debate on the question whether the pardoning power ought to be left uncontrolled in the hands of the executive. We can very well imagine that, after a discussion of this subject, a majority might have decided, erroneously in our opinion, that the pardoning privilege ought to remain where it was; but we cannot imagine that a large number of men could have possibly been from the beginning so unanimous upon so important a subject, that not even a discussion was elicited, had the pardoning been made a subject of any reflection at all. This is impossible in the nature of things. Men will differ in opinion upon almost any point, and would certainly have differed upon so weighty and delicate a subject, had their minds been directed to it.

<sup>17</sup> We certainly think that ill health, threatening disastrous consequences, should form a ground of release in cases of comparatively short sentences, if no good prison hospital exists. But, even where no hospital exists (which is undoubtedly a great deficiency), much caution must be exercised. An experienced and highly respectable prison physician in Massachusetts stated in his report, some years ago, that pardons on account of deficient health had a tendency to increase sickness in the prison, because many prisoners will seriously and perseveringly injure their health in the hope of obtaining thereby a pardon. A prison ought to have a hospital,

also a case of essential justice against the law?)—or because strong suspicions of innocence have arisen after the trial, it is equally clear that pardon ought to be granted after due investigation only, and that this investigation ought to be insured by law.

The pardoning power might be transferred from the executive to the legislature, or to an assembly of judges. We are emphatically averse to either measure. The legislature is composed of members elected to represent a variety of interests and views, all of which ought to have a proportionate weight in the formation of laws; but neither the reasons why, nor the objects for which legislators are elected have any connection with deciding upon a question of pardon. If the decision were left at once to the whole assembly, it would be impossible to give that degree of attentive examination to the details of each case which its nature requires, and a party feeling would frequently warp a decision which could be justified only on the ground of the highest and of essential justice. If the case were first given to a committee (as we may imagine a standing committee of pardon), and the legislature were regularly to follow the

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and if, in spite of a good hospital, the consciousness of being imprisoned has of itself any bad consequences for the imprisoned patient, it must be taken as one of the many incidental but unavoidable consequences of all imprisonment. There are more serious consequences than this, which we are, nevertheless, unable to separate from punishment. Punishment ought always to be individual, and to strike no one but the evil doer; yet there is hardly ever an individual punished whose sentence does not at the same time entail moral or physical suffering upon others. Men are decreed to constitute societies, with concatenated weal and woe, and human judges cannot punish without indirectly inflicting suffering upon those who are unconnected with the crime, but connected with the criminal. If we were absolutely to follow out the first principle, that the offender alone should suffer, we could not punish a single convict.

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decision of the committee, the latter step is useless ; if the legislature, however, were not to follow implicitly this decision, we have the incongruities just indicated. As to the forming a board of pardon of judges alone, we think the case would be equally incongruous. The business of the judge, his duty, and his habit of thinking, are strictly to apply the law. He is a valuable magistrate only so long as he is a faithful organ of the established law ; but, in the case of pardon, the object is neither to make nor to apply a law, but to defeat its operation in a given and peculiar case.

In order to constitute a proper authority, to which the pardoning privilege can be safely intrusted, we ought to organize it so that the following points would seem to be well secured :

That a careful investigation of each case take place before pardon be granted :

That the authority be sufficiently strong to resist importunity :

That it contain a sufficient amount of knowledge of the law, its bearing, and object :

That it enjoy the full confidence of the community.

These great objects, it is believed, can be obtained by a board of pardon, consisting of a proper number of members—say nine (in the republic of Geneva it consists of this number), with one or two judges among them, to be appointed by the legislature, with a periodical partial renovation (one-third leaving every three years), and with these farther provisions :

That the board sit at certain portions of the year—say twice :

That certain and distinct grounds must be stated in every petition for pardon ; and that, without them, all petitions, ever so respectably and numerous signed, be not received :

That pardon can be granted by the governor only when duly recommended by the board; and must be granted if the board recommend it a second time, after the governor has returned the recommendation with his reasons against it:

That no pardon be recommended without advertising in the county where the convict has lived previous to his imprisonment, and where he has committed his crime, that the board have in view to recommend him to pardon, and without giving proper time to act upon the advertisement:

That no pardon be granted without informing, likewise, the warden of the prison, or prisons, in which the subject of the intended pardon is, or has been, incarcerated, of the intention of the board:

That no pardon be granted without previous inquiry of the court which has sentenced the convict:

And that the reasons of the pardon, when granted, be published.

Without some such guarantees, the pardoning power will always be abused. The advertising of the intention of pardoning will not be mistaken for an extra-constitutional and illegal call upon the county to exercise functions which do not belong to it, and ought not to belong to it, as, in reality, the governor of Ohio (years ago) respite the execution of a criminal guilty of an atrocious murder, informing, at the same time, the people of the county whence the criminal came, that he was desirous of knowing whether they desired the criminal pardoned or not.<sup>25</sup>

Nor must it be believed that, while we recommend to inform the warden of a prisoner that his pardon is contemplated, we are desirous of countenancing a system of pardon founded upon the good conduct of the convicts in the prison.

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<sup>25</sup> National Gazette, Philadelphia, October 10, 1838.

We consider such a measure inadmissible, for many reasons. It has been tried in France, on a large scale; and the effect was so bad that its own author obtained its abolition, confessing his error.<sup>19</sup> What we desire is, that proper information be obtained before a convict be pardoned, and that no imposition take place. It frequently happens that a pardon is obtained by persons unacquainted with the culprit, and a dangerous and infamous man is returned to a community which had the deepest interest in seeing the law take its uninterrupted course.

We think it proper that the executive, thus controlled on the one hand, and protected against importunities on the other, form a party to the pardon, because the actual release must go through his hands.

We doubt not that, if a board of pardoning were established, in a short time a series of fair principles and rules, somewhat like the rules of equity, would be settled by practice, and the pardoning would be far less exposed to arbitrary action.

Totally distinct, however, from the pardoning ought to be kept the *restitution* of a convict, when innocence has been proved after conviction. It is a barbarous confusion to confound acknowledgment of wrong committed by society against an individual with the pardoning of a guilty person. Nothing can be pardoned where nothing is to be pardoned, or where the only pardoner is the convict. He is entitled to indemnity, and the process ought even to be called by a different name and differently to be provided for. Not long ago a person sentenced for forgery in England to transportation for a very long period or for life, we forget which, was pardoned after several years endurance of the sentence, be-

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<sup>19</sup> De la Ville de Mirmont, *Observations sur les Maisons Centrales de Detention de Paris*, 1833, p. 55, and sequ.

cause his innocence had been made patent. Some English papers justly remarked how incongruous a *pardon* is in such cases, where, in fact, the question is how a great and ruinous wrong committed by society against an individual may be repaired in some degree at least, and as far as it lies in human power. This is an important subject of its own, deserving the most serious attention of all civilized states, but does not fall within the province proper of pardoning.

FRANCIS LIEBER.

I append to this paper, besides the additional notes which the reader has seen, the following three items:

The official reports of the attorney-general of Massachusetts show that:

In 1850,	prosecutions of crime cost in that state	\$66,589	36
1851,	" " "	71,078	18
1852,	" " "	63,900	68

To this must be added the cost of the courts, detective police, rewards, penitentiaries, prison support.

When we speak of the cost of crime in general, we must not only take into account the above items, but also the waste of property by criminals, and the loss of labor, for criminals by profession do not work, therefore do not produce.

The following extract of a speech by lord Palmerston, secretary for the home department, on June 1, 1853, in the commons, is very remarkable. *C'est tout comme chez nous.* I do not mean our quakers act thus, but women inconsiderately get up petitions, and are joined by bustling religionists. Lord Palmerston said:

"That would be a very great evil, were any change of the law to bring it about. But let us see how the thing would work. Even now, in cases of disputed rights of property, although it is generally matter of great scruple of conscience to de-

pose to statements which are not consistent with truth, yet we frequently see evidence brought before courts of law not founded in fact. But in matters regarding life and liberty, I am sorry to say that benevolent individuals have very little conscience at all. (*'Hear!' and laughter.*) You may depend upon it that I have had too much experience of the truth of what I have stated. I get applications signed by great numbers of most respectable persons in favor of individuals with regard to whose guilt there can be no possible doubt, or any doubt that they have committed the most atrocious crimes. That is a matter of every-day occurrence. Not long ago, a member of the society of Friends actually tried to bribe a witness to absent himself from the trial of a prisoner, in order to screen the man from punishment, of whose guilt no human being could doubt. If you had these second trials, you would have these pious frauds as frequently committed."

Lastly, I would put here a short newspaper paragraph—very simple yet very fearful.

"In the course of an editorial article, intended to show that it is the certainty, and not the severity, of punishment which is needed for the suppression of crime, the Pittsburg Commercial makes the following statement:—"<sup>20</sup>

"In fifteen years, during which the annals of crime in this county have been stained by *more than fifty murders*, a single instance of hanging has been affirmed by the executive as the measure of extreme penalty due; and there justice was cheated of her victim by suicide!"

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<sup>20</sup> National Intelligencer, Washington, July 12, 1853.

## APPENDIX III.

## A PAPER ON SUBJECTS CONNECTED WITH THE INQUISITORIAL TRIAL AND THE LAWS OF EVIDENCE.

Few things, in my opinion, show more distinctly the early English character than the fact that, without vindictiveness or cruelty in the national character, the penal law inflicted death with a fearful disregard of human life, while at the same time the penal trial was carried on with great regard for individual rights and for the mode of ascertaining the truth. The English were from early times a peculiarly jural nation.

Those people who have the inquisitorial trial, on the other hand, were in some instances far less sanguinary in their punishments, but perfectly regardless of the trial, or, rather, the trial seemed to have been established chiefly for the prosecuting party. It aimed at knowing the truth; the means to arrive at it were little cared-about. The rights of the prosecuted person appeared in a shadowy, undefined way. And all this continues to exist in many countries.

I do not speak here of the worst countries only. I do not mean to advert to the Austrian trial, as it was before the late revolutions. I refer, for instance, to the German penal trial; and mean by it the penal trial of the countries in which the common German law prevails, as well as those where, as in Prussia, a trial by statute law is introduced.

The late revolutions have undoubtedly changed some items. The main ideas, however, have remained the same.

Now, when a person accustomed to a regular and well-guarded penal trial reads such works as Feuerbach's Criminal Cases, or any detailed description of a penal trial, the laxity and incongruity of the procedure strike us among other things with reference to the following points :

1. The inquiring judge, that is, the judge who has been detailed, to use a military term, to lead the whole inquiry, and who has been day after day with the prisoner, and only one witness, viz. the secretary, and whose whole skill has been exerted to bring the prisoner to confession, or to establish the crime, is also frequently the first sentencing judge, and always very powerfully influences the sentence. If there is a separate sentencing judge, all the "acts," that is, all that has been written down, is handed over to him, and from them he frames his sentence, upon which the other judges, if there are any, vote in plenary session. As a matter of course, they cannot know much about the subject, and must be guided by the report the sentencing judge makes.

2. The inquiring judge is, in many cases, what we would consider wholly unrestricted. He takes hearsay evidence, and all sorts of evidence, if he thinks proper. He is unrestricted as to time, and an accused person may be kept for years under trial. He is allowed to resort to all kinds of tricks, in order to work upon the imagination of the prisoner ; for instance, calling him up at midnight, examining him and suddenly showing a skull to him. Every worthy and puerile motive to speak the truth, and confess the offence, is resorted to.

3. There is no regular indictment, nor does the accused know in his examinations what is charged against him ; at least the law does not demand that he shall know it.

4. The prisoner is constantly urged to confess; the whole trial assumes the deed charged against the prisoner, and treats him accordingly. Indeed it may be said that, although not avowedly, yet virtually the inquisitorial trial assumes in a very great degree the character of an accusation which the accused has to disprove, not one which the accuser is bound to prove. In some countries and in certain cases this is positively the case. Even the French penal trial is by no means wholly free from this serious fault.

5. There is no physical torture resorted to in order "to bring out" the truth, since the positive abolition of the torture, but the moral torture which is applied is immense, and the judge is authorized by law to punish with lashes or other physical means every contradiction or lie proved from the convict's own statements. That this can easily lead to all sorts of abuses is obvious.

6. There is no cross-examination of witnesses, and no stringent law to compel witnesses in favor of the prisoner to appear before the court.

7. Court and police frightfully mingle in their functions, in the first stages of the trial.

8. There is a most sorrowful defence, cautious, fearful of offending the judges upon whom the promotion of the defensor depends, and empowered to obtain certain points further cleared up only through the court, which is the prosecuting party. Besides, the defence only begins when the whole investigation by the court is at an end, that is to say, all the "acts" are handed over to the defensor. He studies them and writes the defence, which is given along with the "acts" to the sentencing judge.

No wonder that the Germans universally called for a total change of such a trial, and that, as I stated before, some changes have taken place.



The chief incongruity in this inquisitorial trial, however, is that it admits of half proofs, two of which amount to a whole proof, with other logical flagrancies, as well as the legal flagrancy of "deficient proof," according to which a lighter punishment, but still a punishment, is inflicted.

It is hardly conceivable how an intelligent nation, advanced in the sciences, can have continued a logical absurdity of such crying character until the most recent times, and can continue it, in some parts of the country, to this day. It is reversing the things, and substituting evidence, the means of arriving at the fact, which is the thing to determine the punishment, for the criminal fact.

The principle from which we start in penal law is, that crime ought to be followed by evil, as a consequence of the crime. If crimes punished themselves, we should not want judges; if judges were omniscient, we should not want trials. The object of the trial is to prove that a crime has been committed, and that it has been committed by the indicted person. This is called establishing the fact, which means proving it—reproducing it, as it were, before the eyes of the judge; in one word, convincing him of the truth of the charge, of the fact, and the fact alone—the deed can be punishable. But the idea of a fact does not admit of degrees. There may, indeed, be every possible degree of belief in a judge from the first suspicion, from surmise, doubt, and belief, to the fullest conviction; but, if he metes out his punishments accordingly, he does not punish for facts done by others, but according to the degree of belief in himself. He substitutes his own subjective belief for the objective fact. Now, there cannot be half facts, or three-fourths of facts. A man may, indeed, buy poison, to commit murder—he may add to this, the mixing of the poison with a soup; he may add to this, the carrying of the soup to the sick-room; and he may add to this again, the presenting of

the soup to a patient, who finally consumes it; but all these successive acts are not parts of facts. Wherever the evil-minded man stopped, it was a fact; and, if it is punished, it is not punished as part of a crime, but the inchoate crime is a whole penal fact, and, as such, punished. Again, though four persons may, as witnesses, establish a fact—a truth, each witness does not prove, on that account, a fourth of the truth, which, like the fact, is one and indivisible. If they prove a chain which ultimately establishes a fact, they still prove but one fact, and each one proves for himself a whole truth, which, in connection with the other truths, establishes the ultimate truth.

If four not very creditable witnesses establish one fact, when I would not have believed either of them singly, because, in the assumed case, they corroborate one another, when no connivance can have taken place, they are in this case good witnesses, each one for himself, and not four witnesses, each one worth a fourth of a good witness. A thousand liars cannot, as liars, establish a truth, but they may testify under circumstances which deprive them of the character of liars, and thus be in the case good witnesses.

It is true, indeed, that man, conscious of his fallibility, and resolved severely to punish certain crimes, has laid down the rule that, to prove certain crimes in such a manner that the law shall consider them as proved, an amount of testimony shall be necessary which is not required for lighter offences. But this is only as a safeguard, so as to prevent, as far as in us lies, the unjust infliction of severe punishment. It has nothing to do with parts of truths, or parts of facts. It has nothing to do with logic. In barbarous times, however, it was actually conceived that logic itself is of a sliding character, as it were. The Ripuarian laws demanded seventy-two compurgators to absolve an incendiary, or murderer (*Leg. Ripuar.*, cap. vi. vii. and xi.).

Here, the first error was to consider the accused as tainted, who must clear himself, and not as one accused, upon whom the deed must be proved. The second error was that the number of compurgators must rise to clear the tainted person, according to the *taint* (which, as yet, is nothing but accusation). The Koran prescribes, in certain cases, a number of oaths—as though each oath, even of a person unworthy of belief, contained some truth, which, by repetition, could be accumulated, and ultimately form a whole truth. Not quite dissimilar is what we read in Gregory of Tours. When the chastity of a certain queen of France was suspected, three hundred knights swore, without hesitation, that the infant prince was truly begotten by her deceased husband. As if the oath of three hundred knights could have any weight, when none of them could know the fact. But, if people once fall into the error of demanding the proof of the negative to establish innocence, instead of demanding the proof positive of the charge, they must necessarily fall into all sorts of errors. The ecclesiastical law required, in a similar manner, or still requires, seventy witnesses to prove incontinency on a cardinal; and, in Spain, as chancellor Livingston tells us, it required more witnesses to convict a nobleman than a commoner. This is pretty much the same logic which, as Captain Wilkes tells us, induces the Fejeeans to put more powder into the gun if they fire at a large man.

On the other hand, the idea of punishing according to the degree of conviction in the judge, namely, lightly, if light suspicion only has been existing, more severely, if belief has been created, and so on, would not have been wholly inconsistent in ancient times, when men had not yet succeeded in strictly separating the moral law from the law of nature, and when the punishment was considered as a sort of extinction of guilt—a neutralizing agent. This is a theory

which actually some modern ériminalists of prominence have endeavored to revive. According to them, the fact, not the deed, is punished—society has to wipe off the criminal fact which has occurred, and the punishment is like the minus put against the plus. But Aristotle already said, even the gods cannot make undone what has been done. The punishment would resemble the penitence which in early times kings had to undergo for great national calamities. If this unphilosophical view were true, it would be difficult to show why the criminal, who has committed the deed, is the one selected to re-establish the equilibrium or for the atonement. But the common sense of mankind has been in this case, as in a thousand others, sounder than theories of unpractical thinkers.

The judge who punishes half, because the evidence has sufficed to create half a conviction only, commits the same logical fault which a navigator would commit who has seen but dimly something that may be a rock, and would go but half out of the way of the danger. I say he commits the same logical fault, although the effects would be the reverse.

Punishment, which is the intentional infliction of some sufferance as deserved sufferance (in which it differs from the infliction of pain by the surgeon), requires the establishment of the deed, and this is absolute. The various degrees of belief in the deed are only in the judge, not in the deed. The deed must determine the different degrees of infliction of pain or privation ; all else is illogical.

If the reader has thought that I have dwelt too long on this subject, he must remember that millions are to this day subject to such legal logic as has been described.

It will be hardly necessary to refer in this place to the fact, that although the ascertainment of truth is the main object of the trial, it is not on that account allowed to resort to all and every means which may bring about this end.

Sound sense and a due regard to the rights of individuals lead men to the conviction that a fixed law of evidence is necessary, and to prescribe rules according to which courts shall believe facts to be established, discarding all those means which may expose the accused to cruelty, which may be easily abused, which in turn may deceive, and whose effects in general would be worse than the good obtained. Truth, established according to these rules, is called legal truth. There can be but one truth, that is the conviction agreeing with fact, but truth may be established by various means, or by means agreeing with prescribed rules. There may be one witness who testifies that he has seen a man doing that, which, before the court can punish it, requires two witnesses. The judge may be thoroughly convinced that the witness speaks the truth; yet the truth would not be legally established—it would not be a legal truth. This, too, may appear unworthy of mention; but only to those who do not know how vehemently all persons hostile to liberty declaim against the dead letter of the law, the hollow formalism of the Anglican trial, and how anxious they are to substitute the subjective opinion of the judge for the positive and well defined law. I may put it down here as a fact of historical interest that even so late as my early days I heard a criminalist of some distinction regret the abolition of "the question," i. e. the torture, and I speak gravely when I say that, as times go in some countries, I should not be surprised if torture once more should be demanded by some jurists in them. Indeed, has it not been used? Mr. Gladstone's pamphlet on Neapolitan affairs tells us strange things.<sup>1</sup>

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<sup>1</sup> It would seem that the torture actually continues to exist in some parts of Europe. The following is taken from the London Spectator, of December 22d, 1849, which gives as its authority the

well known Allgemeine Zeitung, published at Augsburg, and, consequently, not far from Switzerland.

"A strange circumstance, says the Allgemeine Zeitung, has just taken place at Herisau, the capital of Inner Appenzell, in Switzerland, showing how much in these countries of old liberties civilization is behindhand in some matters. A young girl of nineteen, some months back, assassinated her rival. Her lover was arrested with her, and, as she accused him of the crime, both were put to the torture. The girl yielded to the pain, and confessed her crime; the young man held firm in his denial: the former was condemned to death, and on the 7th of this month was decapitated with the sword, in the market-place of Herisau. This fact is itself a startling one, but the details are just as strange. For two hours the woman was able to struggle against four individuals charged with the execution. After the first hour the strength of the woman was still so great that the men were obliged to desist; the authorities were then consulted, but they declared that justice ought to follow its course. The struggle then recommenced, with greater intensity, and despair seemed to have redoubled the woman's force. At the end of another hour she was at last bound by the hair to a stake, and the sword of the executioner then carried the sentence into effect."

## APPENDIX IV.

## MAGNA CHARTA OF KING JOHN,

15TH DAY OF JUNE, IN THE 17TH YEAR OF THE KING'S REIGN, A. D. 1215.

JOHN, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitain, and earl of Anjou: to the archbishops, bishops, abbots, earls, barons, justiciaries of the forests, sheriffs, governors, officers, and to all bailiffs and other of his faithful subjects, greeting. Know ye, that we, in the presence of God, and for the health of our soul, and of the souls of our ancestors and heirs, and to the honor of God and the exaltation of holy church, and amendment of our kingdom, by advice of our venerable fathers, Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman church; Henry, archbishop of Dublin, William, bishop of London, Peter, of Winchester, Jocelin, of Bath and Glastonbury, Hugh, of Lincoln, Walter, of Worcester, William, of Coventry, Benedict, of Rochester, bishops; and master Pandulph, the pope's subdeacon and ancient servant, brother Aymerick, master of the temple in England, and the noble persons, William Marescall, earl of Pembroke, William, earl of Salisbury, William, earl of Warren, William, earl of Arundel, Alan de Galoway, constable of Scotland, Warin Fitz Gerald, Peter Fitz Herebert, and Hubert de Burgh, senechal of Poitou, Hugo de Nevill, Matthew Fitz Herebert, Thomas Basset, Alan Basset, Philip de Albine, Robert de

Roppele, John Marescall, John Fitz Hugh, and others our liegemen; have, in the first place, granted to God, and by this our present charter confirmed for us and our heirs forever:

I. That the church of England shall be free, and enjoy her whole rights and liberties inviolable. And we will have them so to be observed; which appears from hence that the freedom of elections, which was reckoned most necessary for the church of England, of our own free will and pleasure we have granted and confirmed by our charter, and obtained the confirmation of from pope Innocent the Third, before the discord between us and our barons; which charter we shall observe, and do will it to be faithfully observed by our heirs forever.

II. We have also granted to all the freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to have and to hold to them and their heirs, of us and our heirs.

III. If any of our earls, or barons, or others who hold of us in chief, by military service, shall die, and at the time of his death his heir shall be of full age, and owe a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earl's barony, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and he that oweth less shall give less, according to the ancient custom of fees.

IV. But if the heir of any such shall be under age, and shall be in ward, when he comes of age he shall have his inheritance without relief or without fine.

V. The warden of the land of such heir, who shall be under age, shall take of the land of such heir only reasonable issues, reasonable customs, and reasonable services;



and that without destruction or waste of the men or things; and if we shall commit the guardianship of those lands to the sheriff, or any other who is answerable to us for the issues of the land, and if he shall make destruction and waste upon the ward lands, we will compel him to give satisfaction, and the land shall be committed to two lawful and discreet tenants of that fee, who shall be answerable for the issues to us, or to him whom we shall assign. And if we shall give or sell the wardship of any such lands to any one, and he makes destruction or waste upon them, he shall lose the wardship, which shall be committed to two lawful and discreet tenants of that fee, who shall in like manner be answerable to us, as hath been said.

VI. But the warden, so long as he shall have the wardship of the land, shall keep up and maintain the houses, parks, warrens, ponds, mills and other things pertaining to the land, out of the issues of the same land; and shall restore to the heir, when he comes of full age, his whole land stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

VII. Heirs shall be married without disparagement, so as that before matrimony shall be contracted those who are nearest to the heir in blood shall be made acquainted with it.

VIII. A widow, after the death of her husband, shall forthwith, and without any difficulty, have her marriage and her inheritance; nor shall she give anything for her dower or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the capital messuage or mansion house of her husband, forty days after his death, within which term her dower shall be assigned.

IX. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband. But yet

she shall give security that she will not marry without our assent, if she holds of us, or without the consent of the lord of whom she holds, if she holds of another.

X. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as there shall be chattles of the debtor's upon the premises, sufficient to pay the debt. Nor shall the sureties of the debtor be distrained, so long as the principal debtor is sufficient for the payment of the debt.

XI. And if the principal debtor fail in the payment of the debt, not having wherewithal to discharge it, then the sureties shall answer the debt; and if they will, they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him; unless the principal debtor can show himself acquitted thereof, against the said sureties.

XII. If any one have borrowed anything of the Jews, more or less, and dies before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold. And if the debt falls into our hands, we will take only the chattel mentioned in the charter or instrument.

XIII. And if any one shall die indebted to the Jews, his wife shall have her dower, and pay nothing of that debt; and if the deceased left children under age, they shall have necessaries provided for them according to the tenement (or real estate) of the deceased; and out of the residue the debt shall be paid; saving, however, the service of the lords. In like manner let it be with debts due to other persons than the Jews.

XIV. No scutage or aid shall be imposed in our kingdom, unless by the common council of our kingdom, except to redeem our person, and make our eldest son a knight, and once to marry our eldest daughter; and for this there shall only be paid a reasonable aid.

XV. In like manner it shall be concerning the aids of the city of London; and the city of London shall have all its ancient liberties and free customs, as well by land as by water.

XVI. Furthermore, we will and grant that all other cities, and boroughs, and towns, and ports, shall have all their liberties and free customs; and shall have the common council of the kingdom concerning the assessment of their aids, except in the three cases aforesaid.

XVII. And for the assessing of scutages we shall cause to be summoned the archbishops, bishops, abbots, earls, and great barons of the realm, singly by our letters.

XVIII. And furthermore we shall cause to be summoned in general by our sheriffs and bailiffs, all others who hold of us in chief, at a certain day, that is to say, forty days before the meeting, at least, to a certain place; and in all letters of such summons we will declare the cause of the summons.

XIX. And summons being thus made, the business shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

XX. We will not for the future grant to any one, that he may take aid from his own free tenants, unless to redeem his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall only be paid a reasonable aid.

XXI. No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence.

XXII. Common pleas shall not follow our court, but shall be holden in some certain place. Tryals upon the writs of novel disseisin, and of mort d'ancestor, and of darreine presentment, shall be taken but in their proper counties, and after this manner: We, or if we should be

out of the realm, our chief justiciary, shall send two justiciaries through every county four times a year; who, with the four knights chosen out of every shire by the people, shall hold the said assizes in the county, on the day and at the place appointed.

XXIII. And if any matters cannot be determined on the day appointed to hold the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid shall be appointed to decide them, as is necessary, according as there is more or less business.

XXIV. A freeman shall not be amerced for a small fault, but according to the degree of the fault; and for a great crime in proportion to the heinousness of it; saving to him his contenment, and after the same manner a merchant, saving to him his merchandise.

XXV. And a villain shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciements shall be assessed but by the oath of honest men of the neighborhood.

XXVI. Earls and barons shall not be amerced but by their peers, and according to the quality of the offence.

XXVII. No ecclesiastical person shall be amerced, but according to the proportion aforesaid, and not according to the value of his ecclesiastical benefice.

XXVIII. Neither a town, nor any person, shall be distrained to make bridges over rivers, unless that anciently and of right they are bound to do it.

XXIX. No sheriff, constable, coroners, or other our bailiffs, shall hold pleas of the crown.

XXX. All counties, hundreds, wapentakes and tithings shall stand at the old ferm, without any increase, except in our demesne lands.

XXXI. If any one that holds of us a lay fee dies, and the sheriff or our bailiff show our letters patents of summons

concerning the debt due to us from the deceased, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the deceased found upon his lay fee, to the value of the debt, by the view of lawful men, so as nothing be removed until our whole debt be paid; and the rest shall be left to the executors to fulfil the will of the deceased; and if there be nothing due from him to us, all the chattels shall remain to the deceased, saving to his wife and children their reasonable shares.

XXXII. If any freeman dies intestate, his chattels shall be distributed by the hands of his nearest relations, and friends, by the view of the church, saving to every one his debts which the deceased owed.

XXXIII. No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently gives him money for it, or hath respite of payment from the seller.

XXXIV. No constable shall distrain any knight to give money for castle guard, if he himself shall do it in his own person, or by another able man, in case he shall be hindered by any reasonable cause.

XXXV. And if we shall lead him, or if we shall send him into the army, he shall be free from castle guard for the time he shall be in the army by our command.

XXXVI. No sheriff or bailiff of ours, or any other, shall take horses or carts of any for carriage.

XXXVII. Neither shall we, or our officers, or others, take any man's timber for our castles, or other uses, unless by the consent of the owner of the timber.

XXXVIII. We will retain the lands of those that are convicted of felony but one year and a day, and then they shall be delivered to the lord of the fee.

XXXIX. All weirs for the time to come shall be demolished in the rivers of Thames and Medway, and throughout all England, except upon the sea-coast.

XL. The writ which is called *præcipe* shall not for the future be granted to any one of any tenement whereby a free man may lose his cause.

XLI. There shall be one measure of wine and one of ale through our whole realm, and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth and russets and haberjects, that is to say, two ells within the list; and the weights shall be as the measures.

XLII. From henceforward nothing shall be given or taken for a writ of inquisition, from him that desires an inquisition of life or limb, but shall be granted gratis, and not denied.

XLIII. If any one holds of us by fee farm, or socage, or burgage, and holds lands of another by military service, we will not have the wardship of the heir or land, which belongs to another man's fee, by reason of what he holds of us by fee farm, socage, or burgage; nor will we have the wardship of the fee farm, socage, or burgage, unless the fee farm is bound to perform military service.

XLIV. We will not have the wardship of an heir, nor of any land which he holds of another by military service, by reason of any petit-serjeanty he holds of us, as by the service of giving us arrows, daggers, or the like.

XLV. No bailiff for the future shall put any man to his law, upon his single accusation, without credible witnesses produced to prove it.

XLVI. No freeman shall be taken, or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed; nor will we pass upon him, or commit him to prison, unless by the legal judgment of his peers, or unless by the law of the land.

XLVII. We will sell to no man, we will deny no man, or defer right or justice.

XLVIII. All merchants shall have safe and secure con-

duct to go out of and to come into England, and to stay there, and to pass, as well by land as by water, to buy and sell by the ancient and allowed customs, without any evil toll, except in time of war, or when they shall be of any nation in war with us.

XLIX. And if there shall be found any such in our land in the beginning of a war, they shall be attached, without damage to their bodies or goods, until it may be known unto us, or our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, theirs shall be safe in our lands.

L. It shall be lawful for the time to come, for any one to go out of our kingdom, and return safely and securely by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the benefit of the kingdom, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be in such condition as is above mentioned.

LI. If any man holds of any escheat, as of the honor of Wallingford, Nottingham, Bologne, Lancaster, or of other escheats which are in our hands, and are baronies, and dies, his heir shall not give any other relief, or perform any other service to us than he would to the baron, if the barony were in possession of the baron; we will hold it after the same manner the baron held it.

LII. Those men who dwell without the forest, from henceforth shall not come before our justiciaries of the forest upon summons, but such as are impleaded or are pledges for any that were attached for something concerning the forest.

LIII. We will not make any justiciaries, constables, bailiffs or sheriffs, but what are knowing in the laws of the realm, and are disposed duly to observe it.

LIV. All barons who are founders of abbies, and have charters of the kings of England for the advowson, or are

entitled to it by ancient tenure, may have the custody of them, when void; as they ought to have.

LV. All woods that have been taken into the forests, in our own time, shall forthwith be laid out again, and the like shall be done with the rivers that have been taken or fenced in by us, during our reign.

LVI. All evil customs concerning forests, warrens, and foresters, warreners, sheriffs and their officers, rivers and their keepers, shall forthwith be inquired into in each county, by twelve knights of the same shire; chosen by the most creditable persons in the same county, and upon oath; and within forty days after the said inquest be utterly abolished, so as never to be restored.

LVII. We will immediately give up all hostages and engagements, delivered unto us by our English subjects as securities for their keeping the peace, and yielding us faithful service.

LVIII. We will entirely remove from our bailiwicks the relations of Gerard de Athyes, so as that for the future they shall have no bailiwick in England. We will also remove Engelard de Cygony, Andrew, Peter and Gyon de Canceles, Gyon de Cygony, Geoffrey de Martyn and his brothers, Philip Mark and his brothers, and his nephew Geoffrey, and their whole retinue.

LIX. And as soon as peace is restored, we will send out of the kingdom all foreign soldiers, crossbowmen and stipendiaries, who are come with horses and arms, to the injury of our people.

LX. If any one hath been dispossessed or deprived by us without the legal judgment of his peers, of his lands, castles, liberties or right, we will forthwith restore them to him; and if any dispute arises upon this head, let the matter be decided by the five and twenty barons hereafter mentioned, for the preservation of the peace.



LXI. As for all those things of which any person has without the legal judgment of his peers been dispossessed or deprived, either by king Henry, our father, or our brother, king Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the Croises; excepting those things about which there is a suit depending, or whereof an inquest hath been made by our order, before we undertook the crusade. But when we return from our pilgrimage, or if we do not perform it, we will immediately cause full justice to be administered therein.

LXII. The same respite we shall have for disafforesting the forests, which Henry, our father, or our brother, Richard, have afforested; and for the wardship of lands which are in another's fee, in the same manner as we have hitherto enjoyed these wardships, by reason of a fee held of us by knight's service, and for the abbies founded in any other fee than our own, in which the lord of the fee claims a right; and when we return from our pilgrimage, or if we should not perform it, we will immediately do full justice to all the complainants in this behalf.

LXIII. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other man than her husband.

LXIV. All unjust and illegal fines, and all amerciaments, imposed unjustly and contrary to the law of the land, shall be entirely forgiven, or else left to the decision of the five and twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the foresaid Stephen, archbishop of Canterbury, if he can be present; and others whom he shall think fit to take along with him; and if he cannot be present, the business shall nevertheless go on without him; but so that if one or more

of the five and twenty barons aforesaid be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room out of the said five and twenty, and sworn by the rest to decide that matter.

LXV. If we have disseised or dispossessed the Welsh of any lands, liberties, or other things, without the legal judgment of their peers, they shall be immediately restored to them. And if any dispute arises upon this head, the matter shall be determined in the Marches, by the judgment of their peers; for tenements in England, according to the law of England; for tenements in Wales, according to the law of Wales; for tenements in the Marches, according to the law of the Marches; the same shall the Welsh do to us and our subjects.

LXVI. As for all those things of which any Welshman hath, without the legal judgment of his peers, been disseised or deprived, by king Henry, our father, or our brother, king Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the croises; excepting those things about which a suit is pending, or whereof an inquest has been made by our order, before we undertook the crusade. But when we return, or if we stay at home, and do not perform our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh, and of the parts aforementioned.

LXVII. We will without delay dismiss the son of Lewelin, and all the Welsh hostages, and release them from the engagements they entered into with us for the preservation of the peace.

LXVIII. We shall treat with Alexander, king of Scots, concerning the restoring of his sisters, and hostages, and rights and liberties, in the same form and manner as we

shall do to the rest of our barons of England; unless by the engagements which his father William, late king of Scots, hath entered into with us, it ought to be otherwise; and this shall be left to the determination of his peers in our court.

LXIX. All the aforesaid customs and liberties which we have granted to be holden in our kingdom, as much as it belongs to us towards our people, all our subjects, as well clergy as laity, shall observe, as far as they are concerned, towards their dependents.

LXX. And whereas, for the honor of God and the amendment of our kingdom, and for quieting the discord that has arisen between us and our barons, we have granted all the things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the following security, namely: that the barons may choose five and twenty barons of the kingdom, whom they shall think convenient, who shall take care with all their might to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present charter confirmed. So as that if we, our justiciary, our bailiffs, or any of our officers, shall in any case fail in the performance of them towards any person, or shall break through any of these articles of peace and security, and the offence is notified to four barons, chosen out of the five and twenty aforementioned, the said four barons shall repair to us, or to our justiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed without delay; and if it is not redressed by us, or, if we should chance to be out of the realm, if it is not redressed by our justiciary within forty days, reckoning from the time it has been notified to us, or to our justiciary, if we should be out of the realm, the four barons aforesaid shall lay the cause before the rest of the five and twenty barons, and the said five and twenty barons, together with the community of the whole kingdom, shall distrein and

distress us in all the ways possible; namely, by seising our castles, lands, possessions, and in any other manner they can, till the grievance is redressed to their pleasure; saving harmless our own person, and the persons of our queen and children; and when it is redressed, they shall obey us as before.

LXXI. And any person whatsoever in the kingdom may swear that he will obey the orders of the five and twenty barons aforesaid, in the execution of the premises, and that he will distress us, jointly with them, to the utmost of his power; and we give public and free liberty to any one that will swear to them, and never shall hinder any person from taking the same oath.

LXXII. As for all those of our subjects, who will not of their own accord swear to join the five and twenty barons in distreining and distressing us, we will issue our order to make them take the same oath as aforesaid.

LXXIII. And if any one of the five and twenty barons dies, or goes out of the kingdom, or is hindered any other way from putting the things aforesaid in execution, the rest of the said five and twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest.

LXXIV. In all things that are committed to the charge of these five and twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, or some of them summoned will not or cannot come, whatever is agreed upon or enjoined by the major part of those who are present shall be reputed as firm and valid as if all the five and twenty had given their consent; and the foresaid five and twenty shall swear that all the premises they shall faithfully observe, and cause with all their power to be observed.

LXXXV. And we will not, by ourselves or others, procure anything whereby any of these concessions and liberties be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other.

LXXXVI. And all the illwill, anger and malice that hath arisen between us and our subjects of the clergy and laity, from the first breaking out of the dissension between us, we do fully remit and forgive. Moreover, all trespasses occasioned by the said dissensions, from Easter, in the sixteenth year of our reign, till the restoration of peace and tranquillity, we hereby entirely remit to all, clergy as well as laity, and as far as in us lies, do fully forgive.

LXXXVII. We have moreover granted them our letters patents testimonial of Stephen, lord-archbishop of Canterbury, of Henry, lord-archbishop of Dublin, and the bishops aforesaid, as also of master Pandulph, for the security and concessions aforesaid.

LXXXVIII. Wherefore we will, and firmly enjoin, that the church of England be free, and that all men in our kingdom have and hold all the aforesaid liberties, rights and concessions, truly and peaceably, freely and quietly, fully and wholly, to themselves and their heirs, of us and our heirs, in all things and places forever, as is aforesaid.

LXXXIX. It is also sworn, as well on our part as upon the part of the barons, that all the things aforesaid shall faithfully and sincerely be observed.

Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Runningmede, between Windelsore and Staines, the 17th day of June, in the 17th year of our reign.

The great charter has been repeatedly amended and con-

firmed. I take the liberty of copying the following down to the end of page 201, from Mr. Creasy's Text-Book of the Constitution.<sup>1</sup>

## MAGNA CHARTA,

### THE GREAT CHARTER,

(TRANSLATED AS IN THE STATUTES AT LARGE.)

MADE IN THE NINTH YEAR OF KING HENRY THE THIRD, AND CONFIRMED BY KING EDWARD THE FIRST, IN THE FIVE AND TWENTIETH YEAR OF HIS REIGN.

Edward; by the grace of God king of England, lord of Ireland, and duke of Guyan: to all archbishops, bishops, &c. We have seen the great charter of the lord Henry, sometimes king of England, our father, of the liberties of England, in these words:

"Henry, by the grace of God king of England, lord of Ireland, duke of Normandy and Guyan, and earl of Anjou: to all archbishops, bishops, abbots, priors, earls, barons, sheriffs, provosts, and officers, and to all bailiffs and other our faithful subjects, which shall see this present charter, greeting: Know ye, that we, unto the honor of almighty God, and for the salvation of the souls of our progenitors and successors, kings of England, to the advancement of holy church and amendment of our realm, of our mere and free will, have given and granted to all archbishops, bishops, abbots, priors, earls, barons, and to all freemen of this our

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<sup>1</sup> The Text-Book of the Constitution, Magna Charta, The Petition of Rights and the Bill of Rights, with Historical Comments and Remarks on the Present Political Emergencies, by E. S. Creasy, M. A., Barrister-at-Law, Professor of History in University College, London, &c. London, 1848. A small work of 63 pages, excellent in its kind.

realm, these liberties following, to be kept in our kingdom of England forever."

## CHAPTER I.

*A Confirmation of Liberties.*

"First, we have granted to God, and by this our present charter have confirmed for us and our heirs forever, that the church of England shall be free, and shall have all her whole rights and liberties inviolable. We have granted, also, and given to all the freemen of our realm, for us and our heirs forever, these liberties underwritten, to have and to hold to them and their heirs, of us and our heirs forever."

## CHAPTER II.

*The Relief of the King's Tenant of full Age.*

[Same as 2d chapter of John's Charter.]

## CHAPTER III.

*The Wardship of the Heir within Age. The Heir a Knight.*

[Similar to 3d chapter of John's Charter.]

## CHAPTER IV.

*No waste shall be made by a Guardian in waste lands.*

[Same as 4th chapter of John's Charter.]

## CHAPTER V.

*Guardians shall maintain the Inheritance of Wards. Of Bishoprics, &c.*

[Similar to 5th chapter of John's Charter, with addition of like provisions against the waste of ecclesiastical possessions while in the king's hand during a vacancy in the see, &c.]

## CHAPTER VI.

*Heirs shall be Married without Disparagement.*

[Similar to 6th chapter of John's Charter.]

CHAPTER VII.

*A Widow shall have her Marriage, Inheritance and Quarantine. The King's Widow, &c.*

[Similar (with additions) to the 7th and 8th chapters of John's Charter.]

CHAPTER VIII.

*How Sureties shall be charged to the King.*

[Same as 9th chapter of John's Charter.]

CHAPTER IX.

*The Liberties of London and other Cities and Towns confirmed.*

[Same as 13th chapter of John's Charter.]

CHAPTER X.

*None shall distrain for more Service than is due.*

[Same as 16th chapter of John's Charter.]

CHAPTER XI.

*Common Pleas shall not follow the King's Court.*

[Same as 17th chapter of John's Charter.]

CHAPTERS XII. & XIII.

*When and before whom Assizes shall be taken. Adjournment for Difficulty. Assizes of Darrein Presentment.*

[Analogous to 18th and 19th chapters of John's Charter.]

CHAPTER XIV.

*How Men of all sorts shall be amerced, and by whom.*

[Same as 20th and 21st chapters of John's Charter.]

CHAPTERS XV. & XVI.

*Making and defending of Bridges and Banks.*

[Similar to 23d chapter of John's Charter.]

CHAPTER XVII.

*Holding Pleas of the Crown.*

[Same as 24th chapter of John's Charter.]



## CHAPTER XVIII.

*The King's Debtor dying, the King shall be first paid.*

[Same as 26th chapter of John's Charter.]

## CHAPTERS XIX., XX. &amp; XXI.

*Purveyors for a Castle. Doing of Castle-ward. Taking of Horses, Carts and Woods.*

[Same as 28th, 29th, 30th and 31st chapters of John's Charter.]

## CHAPTER XXII.

*How long Felons' Lands shall be holden by the King.*

[Same as 32d chapter of John's Charter.]

## CHAPTER XXIII.

*In what places Wears shall be put down.*

[Same as 33d chapter of John's Charter.]

## CHAPTER XXIV.

*In what case a Præcipe in Capite is grantable.*

[Same as 14th chapter of John's Charter.]

## CHAPTER XXV.

*There shall be but one Measure through the Realm.*

[Same as 35th chapter of John's Charter.]

## CHAPTER XXVI.

*Inquisition of Life and Member.*

[Same as 38th chapter of John's Charter.]

## CHAPTER XXVII.

*Tenure of the King in Socage, and of another by Knight's Service. Petit Serjeanty.*

[Same as 37th chapter of John's Charter.]

## CHAPTER XXVIII.

*Wager of Law shall not be without witness.*

[Same as 38th chapter of John's Charter.]

## CHAPTER XXIX.

*None shall be condemned without Trial. Justice shall not be sold or deferred.<sup>2</sup>*

"No freeman shall be taken, or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man, either justice or right."

## CHAPTER XXX.

*Merchant Strangers coming into this Realm shall be well used.*

[Same as 41st chapter of John's Charter.]

## CHAPTER XXXI.

*Tenure of a Barony coming into the King's hands by Escheat.*

[Same as 43d chapter of John's Charter.]

## CHAPTER XXXII.

*Lands shall not be Alienated to the Prejudice of the Lord's Service [i. e. Lord of the Fee].*

## CHAPTER XXXIII.

*Patrons of Abbeys shall have the custody of them in time of Vacation.*

[Same as 46th chapter of John's Charter.]

## CHAPTER XXXIV.

*In what cases only a Woman shall have an Appeal of Death.*

[Same as 51st chapter of John's Charter.]

## CHAPTER XXXV.

*At what time shall be kept a County Court, a Sheriff's Term, and a Lect.*

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<sup>2</sup> See 29th and 40th Chapters of John's Charter.

## CHAPTER XXXVI.

*No Land shall be given in Mortmain.*

"It shall not be lawful from henceforth to any to give his lands to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom he received it: if any from henceforth give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee."

## CHAPTER XXXVII.

*A Subsidy in respect of this Charter and the Charter of the Forest granted to the King.*

"Escuage from henceforth shall be taken like as it was wont to be in the time of king Henry, our grandfather; reserving to all archbishops, bishops, abbots, priors, templars, hospitalers, earls, barons, and all persons, as well spiritual as temporal, all their free liberties and free customs, which they have had in time past. And all these customs and liberties aforesaid, which we have granted to be holden within this our realm, as much as appertaineth to us and our heirs, we shall observe. And all men of this our realm, as well spiritual as temporal (as much as in them is), shall observe the same against all persons in like wise. And for this our gift and grant of these liberties, and of others contained in our charter of liberties of our forest, the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and other our subjects, have given unto us the fifteenth part of all their moveables. And we have granted unto them, for us and our heirs, that neither we nor our heirs shall procure or do anything whereby the liberties in this charter contained shall be infringed or broken. And if anything be procured by any person contrary to the pre-

mises, it shall be had of no force nor effect. These being witnesses: Lord B., archbishop of Canterbury, E., bishop of London, I., bishop of Bath, P., of Winchester, H., of Lincoln, R., of Salisbury, W., of Rochester, W., of Worcester, J., of Ely, H., of Hereford, R., of Chichester, W., of Exeter, bishops; the abbot of St. Edmonds, the abbot of St. Albans, the abbot of Bello, the abbot of St. Augustines in Canterbury, the abbot of Evesham, the abbot of Westminster, the abbot of Bourgh St. Peter, the abbot of Reding, the abbot of Abindon, the abbot of Malmesbury, the abbot of Wincheomb, the abbot of Hyde, the abbot of Certesy, the abbot of Sherburn, the abbot of Cerne, the abbot of Abbotsbir, the abbot of Middleton, the abbot of Saleby, the abbot of Cirencester; H. de Burgh, justice, H., earl of Chester and Lincoln, W., earl of Salisbury, W., earl of Warren, G. de Clare, earl of Gloucester and Hereford, W. de Ferrars, earl of Derby, W. de Mandeville, earl of Essex, H. de Bygod, earl of Norfolk, W., earl of Albemarle, H., earl of Hereford, J., constable of Chester, R. de Ros, R. Fitzwalter, R. de Vyponte, W. de Bruer, R. de Muntefichet, P. Fitzherbert, W. de Aubenie, J. Gresly, F. de Breus, J. de Monemue, J. Fitzallen, H. de Mortimer, W. de Beauchamp, W. de St. John, P. de Mauly, Brian de Lisle, Thomas de Multon, R. de Argenteyn, G. de Nevil, W. Mauduit, J. de Balun, and others."

We, ratifying and approving these gifts and grants aforesaid, confirm and make strong all the same for us and our heirs perpetually; and by the tenor of these presents do renew the same, willing and granting for us and our heirs that this charter, and all and singular its articles, forever shall be stedfastly, firmly and inviolably observed. Although some articles in the same charter contained yet hitherto peradventure have not been kept, we will and, by authority royal, command from henceforth firmly they be

observed. In witness whereof, we have caused these our letters patent to be made. T. Edward, our son, at Westminster, the twelfth day of October, in the twenty-fifth year of our reign.

Magna Charta, in this form, has been solemnly confirmed by our kings and parliaments upwards of thirty times; but in the twenty-fifth year of Edward I. much more than a simple confirmation of it was obtained for England. As has been already mentioned, the original charter of John forbade the levying of *escuage*, save by consent of the great council of the land; and although those important provisions were not repeated in Henry's charter, it is certain that they were respected. Henry's barons frequently refused him the subsidies which his prodigality was always demanding. Neither he nor any of his ministers seems ever to have claimed for the crown the prerogative of taxing the landholders at discretion; but the sovereign's right of levying money from his towns and cities, under the name of tallages or prises, was constantly exercised during Henry III.'s reign, and during the earlier portion of his son's. But, by the statute of Henry I. intituled *Confirmatio Chartarum*, all private property was secured from royal spoliation, and placed under the safeguard of the great council of *all* the realm. The material portions of that statute are as follows:

#### CONFIRMATIO CHARTARUM.

ANNO VICESIMO QUINTO EDV. I.

CAP. V.

And for so much as divers people of our realm are in fear that the aids and tasks which they have given to us before-time, towards our wars and other business, of their own grant and good will (howsoever they were made), might

turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and likewise for the prises taken throughout the realm, in our name, by our ministers, we have granted for us and our heirs that we shall not draw such aids, tasks, nor prises, into a custom for anything that hath been done heretofore, be it by roll or any other precedent that may be founden.

## CAP. VI.

Moreover, we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all the commonalty of the land, that for no business from thenceforth we *shall take such manner of aids, tasks, nor prises, but by the common assent of all<sup>s</sup> the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.*

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\* "Par commun assent de *tut* le royaume." The version in our statute-book omits the important word "All."

## APPENDIX V.

THE PETITION OF RIGHTS.<sup>1</sup>

*To the King's Most Excellent Majestie.*

Humbly shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembled, that whereas it is declared and enacted by a Statute, made in the tyme of the Raigne of King Edward the first, commonly called "Statutum de Tallagio non concedendo," that no Tallage or Aide should be laid or levied, by the King or his heires, in this Realme; without the good-will and assent of the Arch Bishoppes, Bishoppes, Earles, Barons, Knights, Burgesses and other the freemen of the cominalty of this realme: And by Authority of Parliament houlden in the five and twentieth yere of the Raigne of King Edward the third, it is declared and enacted, that from thenceforth noe person should be compelled to make any loanes to the King against his will, because such loanes were against reason, and the franchise of the land; and by other lawes of this realme it is provided, that none should be charged by any charge or imposition, called a Benevolence, nor by such like charge, by which the Statuts before mentioned, and other the good lawes and statuts of this Realme,

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<sup>1</sup> This petition was drawn up by Sir Edward Coke. Coke, 207, edit. of 1697.

your Subjects have inherited this freedom, that they should not be compelled to contribute to any Tax, Tallage, Aide, or other like charge, not sett by common consent in Parliament.

Yet nevertheless of late, divers commissions, directed to sundrie commissioners in severall Counties, with instructions, have been issued, by means whereof your People have bene in divers places assembled, and required to lend certaine sommes of money unto your Majestie, and many of them upon their refusall soe to doe, have had an oath administered unto them, not warrantable by the Lawes or Statuts of this Realme, and have been constrained to become bound to make appearance, and give attendance before your Privie Councell, and in other places; and others of them have bene therefore imprisoned, confined, and sundrie other wayes molested and disquieted: And divers others charges have bene laid and leaved upon your People in severall Counties, by Lord Lieutenants, Deputie-Lieutenants, Commissioners for musters, Justices of peace and others, by commaunde or direction from your Majestie, or your Privie-Councell, against the lawes and free customes of the realme.

And whereas alsoe by the Statute called "The greate Charter of the Liberties of England," it is declared and enacted, that noe freeman may be taken or imprisoned, or be disseised of his freehold or liberties, or his free customes, or be outlawed or exiled, or in any manner destroyed, but by the lawfull judgment of his Peeres, or by the lawe of the land.

And in the eight and twentieth yere of the reigne of King Edward the third, it was declared and enacted by Authoritie of Parliament, that no man, of what estate or condition that he be, should be putt out of his lands or tenements, nor taken nor imprisoned, nor disherited, nor putt to



death, without being brought to answer by due process of lawe.

Nevertheless against the tenour of the said Statutes, and other the good lawes and Statuts of your Realme, to that end provided, divers of your subjects have of late beene imprisoned without any cause showed; and when for their deliverance they were brought before your Justices, by your Majestie's Writ of Habeas Corpus, there to undergoe and receive, as the Court should order, and their Keepers commaunded to certify the causes of their detayner; noe cause was certified, but that they were detayned by your Majestie's special commaund, signified by the Lords of your Privie Councell, and yet were returned back to severall prisons, without being charged with any thynge to which they might make answere according to the lawe.

And whereas of late, great companies of souldiers and marriners have bene dispersed into divers Counties of the Realme, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojorne, against the lawes and customes of this realme, and to the great grievance and vexation of the People.

And whereas alsoe, by authority of Parliament, in the 25th yere of the raigne of King Edward III., it is declared and enacted that noe man should be forejudged of life or lymbe, against the forme of the great Charter, and the lawe of the land, and by the said great Charter, and other the Laws and Statuts of this your Realme, no man ought to be adjudged to death, but by the lawes established in this your realme, either by the customes of the same realme, or by Acts of Parliament; And whereas noe offender, of what kind soever, is exempted from the proceedings to be used, and the punishments to be inflicted by the lawes and statutes of

this your realme; nevertheless of late time, divers commissions under your Majestie's Greate Seale have issued forth, by which certaine persons have been assigned and appointed commissioners, with power and authoritie to proceed within the land, according to the justice of martiall lawe, against such souldiers and marriners, or other dissolute persons joyning with them, as should commit any murder, robbery, felonie, meeting, or other outrage or misdemeavour, whatsoever; and by such summarie course and order as is agreeable to martiall lawe, and as is used in armies in tyme of war, to proceed to the tryal and condemnation of such offenders, and them to cause to be executed and putt to death, according to the lawe martiall.

By pretext whereof, some of your Majestie's Subjects have bene by some of the said commissioners put to death, when and where, if by the lawes and statuts of the land they had deserved death, by the same lawes and statuts alsoe they might, and by noe other ought, to have been judged and executed.

And alsoe sundrie grievous offenders, by colour thereof clayminge an exemption, have escaped the punishments due to them by the lawes and statuts of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders, according to the same lawes and statuts, upon pretence that the said offenders were punishable only by martiall lawe, and by authority of such commissions as aforesaid; which commissions, and all others of like nature, are wholly and directlie contrary to the said laws and statuts of this your realme.

They doe therefore humbly pray your most excellent Majestie, That no man hereafter be compelled to make or yielde any gifte, loane, benevolence, tax, or such like charge, without common consent by Act of Parliament;

and that none be called to make answeare, or take such oath, or to give attendance, or be confyned, or otherwise molested or disquieted concerning the same, or for refusall thereof: And that noe freeman, in any such manner as is before mentioned, be imprisoned or detayned: And that your Majestie would be pleased to remove the said souldiers and marriners, and that your People may not be soe burthened in the tyme to come: And that the aforesaid commissions for proceedinge by martiall lawe, may be revoaked and annulled; and that hereafter, noe commissions of like nature may issue forth to any person or persons whatsoever, to be executed as aforesaid, least by colour of them, any of your Majestie's subjects be destroyed, or putt to death, contrary to the laws and franchise of the land.

All which they do most humbly pray of your most excellent Majestie, as their Rights and Liberties, according to the lawes and statuts of this Realme: And that your Majestie would also vouchsafe to declare, that the awardest, doeings, and proceedings; to the prejudice of your People, in any of the premisses, shall not be drawn hereafter into consequence or example: And that your Majestie would be alsoe graciously pleased, for the further comfort and safetie of your people, to declare your royal will and pleasure, That in the things aforesaid all your officers and ministers shall serve you, according to the lawes and statuts of this realme, as they tender the honour of your majestie, and the prosperity of this Kingdom.

*The King's Answer to the Petition of Rights.*

The King willeth that Right be done, according to the laws and customs of the realme; and that the Statutes be put in due execution, that his subjects may have no cause to complain of any wrong or oppressions, contrary to their just Rights and Liberties, to the preservation whereof he

holds himself in conscience as well obliged, as of his prerogative.

*Petition of both Houses to the King, on the 7th day of June, 1628; wherein a more full and satisfactory answer to the above Petition is prayed for.*

May it please your most excellent Majestie, the Lords Spiritual and Temporal, and Commons in Parliament assembled, taking in consideration that the good intelligence between your Majestie and your People, doth much depend upon your Majestie's answer upon their Petition of Rights, formerly presented; with unanimous consent do new become most humble suitors unto your Majestie, that you would be pleased to give a clear and satisfactory answer thereunto in full Parliament.

To which Petition the King replied:

The answer I have already given you was made with so good deliberation, and approved by the judgments of so many wise men, that I could not have imagined but that it would have given you full satisfaction: But to avoid all ambiguous interpretations, and to show you there is no doubleness in my meaning, I am willing to pleasure you as well in words as in substance: Read your petition, and you shall have an answer that I am sure will please you.

Here the petition was read, and the following answer was returned: "Soit Droit fait comme il est désiré." C. R.

Then said his Majesty:

This I am sure is full, yet no more than I granted you in my first answer, for the meaning of that, was to confirm your liberties, knowing according to your own protestations, that you neither mean nor can hurt my prerogative. And I assure you, my maxim is, that the People's liberties strengthen the King's Prerogative, and the King's Prerogative is to defend the People's Liberties.

You see how ready I have shown myself to satisfy your demand, so that I have done my part; wherefore if this parliament have not a happy conclusion, the sin is yours, I am free from it.

[The above is the Answer of the King in Parliament, and his Speech on that occasion, June 7th, 1628.]

## APPENDIX VI.

AN ACT FOR THE BETTER SECURING THE LIBERTY OF THE SUBJECT, AND FOR PREVENTION OF IMPRISONMENTS BEYOND THE SEAS, COMMONLY CALLED "THE HABEAS CORPUS ACT."<sup>1</sup>

31 CH. 2. CH. 2, MAY, 1679.

WHEREAS great delays have been used by sheriffs, gaolers and other officers, to whose custody any of the king's subjects have been committed, for criminal or supposed criminal matters, in making returns of writs of habeas corpus, to them directed, by standing out on alias or pluries habeas corpus, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the king's subjects have been, and hereafter may be, long detained in prison, in such cases where by law they are bailable, to their great charge and vexation :

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters; (2) *Be it enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority thereof,*

<sup>1</sup> Copied from the Statutes at Large, by Danby Pickering, Esq., edit. 1763, vol. 8, p. 432.

That whensoever any person or persons shall bring any *habeas corpus* directed unto any sheriff or sheriffs, gaoler, minister, or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof, as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and especially expressed in the warrant of commitment), upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding 12 pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought, according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; (3) and bring; or cause to be brought, the body of the party so committed or restrained, unto or before the lord chancellor, or lord keeper of the great seal of England, for the time being, or the judges or barons of the said court, from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; (4) and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is, or shall be residing; and if beyond the distance of 20 miles, and not above 100 miles, then within the space of 10 days, and if beyond the distance of 100 miles, then within the space of 20 days after such delivery aforesaid, and not longer.

III. And to the intent that no sheriff, gaoler or other officer may pretend ignorance of the import of any such writ; (2) Be it enacted by the authority aforesaid, that all such writs shall be marked in this manner: "Per statutum, tricesimo primo Caroli secundi Regis," and shall be signed by the person that awards the same; (3) and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason, plainly expressed in the warrant of commitment, in the vacation time and out of term it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution by legal process), or any one in his or their behalf, to appeal or complain to the lord chancellor or lord keeper, or any one of his majesty's justices, either of the one bench or of the other, or the barons of the exchequer of the degree of the coif; (4) and the said lord chancellor, lord keeper, justices or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an habeas corpus, under the seal of such court whereof he shall then be one of the judges, (5) to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable *immediate* before the said lord chancellor or lord keeper, or such justice, baron, or any other justice or baron of the degree of the coif, of any of the said courts; (6) and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or



under-keepers, or their deputy, in whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said lord chancellor, or lord keeper, or such justices, barons, or one of them, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ and the true causes of the commitment or detainer; (7) and thereupon, within two days after the party shall be brought before them, the said lord chancellor or lord keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and the nature of the offence, for his or their appearance in the court of king's bench the term following, or at the next assizes, sessions, or general gaol delivery, of or for such county, city or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances into the said court where such appearance is to be made; (8) unless it shall appear to the said lord chancellor, or lord keeper, or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences for the which by the law the prisoner is not bailable.

IV. Provided always, and be it enacted, That if any person shall have wilfully neglected, by the space of two

whole terms after his imprisonment, to pray a habeas corpus for his enlargement, such person so wilfully neglecting shall not have any habeas corpus to be granted in vacation time, in pursuance of this act.

V. And be it further enacted, by the authority aforesaid, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly; all and every the head gaolers and keepers of such person, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of £100; (2) and for the second offence the sum of £200, and shall and is hereby made incapable to hold or execute his said office; (3) the said penalties to be recovered by the prisoner or party grieved, his executors and administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the king's courts at Westminster, wherein no essoin, protection, privilege, injunction, wager of law, or stay of prosecution by "Non vult ulterius prosequi," or otherwise, shall be admitted or allowed, or any more than one imparlance; (4) and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring

the officers or person within the said penalty for the second offence.

VI. And for the prevention of unjust vexation by reiterated commitments for the same offence; (2) Be it enacted, by the authority aforesaid, That no person or persons, which shall be delivered or set at large upon any habeas corpus, shall at any time hereafter be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; (3) and if any other person or persons shall knowingly, contrary to this act recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of £500; any colorable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

VII. Provided always, and be it further enacted, That if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of oyer and terminer or general gaol delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer or general gaol delivery, after such commitment; it shall and may be lawful to and for the judges of the court of king's bench, and justices of oyer and terminer or general gaol delivery, and they are hereby required, upon motion to them made in open court the last day of the term, sessions or gaol delivery, either by the prisoner or any one in his behalf, to set at liberty the pri-

soner upon bail, unless it appear to the judges and justices, upon oath made, that the witnesses for the king could not be produced the same term, sessions or general gaol delivery; (2) and if any person or persons committed as aforesaid, upon his prayer or petition in open court the first week of the term or the first day of the sessions of oyer and terminer and general gaol delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer or general gaol delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment:

VIII. Provided always, That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action; or with process in any civil-cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law for such other suit.

IX. Provided always, and be it further enacted by the authority aforesaid, That if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers; (2) unless it be by habeas corpus or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer, to carry such prisoner to some common gaol; (3) or where any person is sent by order of any judge of assize, or justice of the peace, to any common workhouse or house of correction; (4) or where the prisoner is removed from one place or prison to another within the same county, in order to his or her trial or discharge in due course of law; (5) or in case of sudden fire or infection, or other necessity; (6) and if any person or persons shall, after such commitment aforesaid,

make out and sign or countersign any warrant or warrants for such removal aforesaid, contrary to this act; as well he that makes or signs or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

X. Provided also, and be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their habeas corpus, as well out of the high court of chancery or court of exchequer as out of the courts of king's bench or common pleas, or either of them; (2) and if the said lord chancellor or lord keeper, or any judge or judges, baron or barons, for the time being, of the degree of the coif, of any of the courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of habeas corpus, by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved, the sum of £500, to be recovered in manner aforesaid.

XI. And be it declared and enacted by the authority aforesaid, That an habeas corpus, according to the true intent and meaning of this act, may be directed and run into any county Palatine, the Cinque Ports, or other privileged places within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and the islands of Jersey or Guernsey; any law or usage to the contrary notwithstanding.

XII. And for preventing illegal imprisonments in prisons beyond the seas; (2) Be it further enacted by the authority aforesaid, That no subject of this realm, that now is or here-

after shall be an inhabitant or resiant of this kingdom of England, dominion of Wales, or town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands, or places, beyond the seas, which are or at any time hereafter shall be within or without the dominions of his majesty, his heirs or successors; (3) and that every such imprisonment is hereby enacted and adjudged to be illegal; (4) and that if any of the said subjects now is or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment maintain, by virtue of this act, an action or actions of false imprisonment, in any of his majesty's courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this act, and against all or any person or persons that shall frame, contrive, write, seal or countersign any warrant or writing for such commitment, detainer, imprisonment, or transportation, or shall be advising; aiding, or assisting in the same, or any of them; (5) and the plaintiff in every such action shall have judgment to recover his treble costs, besides damages, which damages so to be given shall not be less than £500; (6) in which action no delay, stay or stop of proceeding by rule, order or command, nor no injunction, protection or privilege whatsoever, nor any other than one imparlance, shall be allowed, excepting such rule of the court wherein such action shall depend, made in open court, as shall be thought in justice necessary for special cause to be expressed in the said rule; (7) and the person or persons who shall knowingly frame, contrive, write, seal or countersign any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison, or transport any person or persons, contrary to this act, or be any ways advising, aiding or assisting therein, being

lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England, dominion of Wales, or town of Berwick upon Tweed, or any of the islands, territories or dominions thereunto belonging; (8) and shall incur and sustain the pains, penalties and forfeitures limited, ordained and provided in and by the statute of provision and præmunire, made in the sixteenth year of king Richard the Second; (9) and be incapable of any pardon from the king, his heirs or successors, of the said forfeitures, losses or disabilities, or any of them.

XIII. Provided always, That nothing in this act shall extend to give benefit to any person who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.

XIV. Provided always, and be it enacted, That if any person or persons lawfully convicted of any felony, shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this act, or anything herein contained, to the contrary notwithstanding.

XV. Provided also, and be it enacted, That nothing herein contained shall be deemed, construed or taken to extend to the imprisonment of any person before the first day of June, one thousand six hundred and seventy-nine, or to anything advised, procured or otherwise done relating to such imprisonment; anything herein contained to the contrary notwithstanding.

XVI. Provided also, That if any person or persons at any time resiant in this realm, shall have committed any capital offence in Scotland or in Ireland, or in any of the islands or

foreign plantations of the king, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial in such manner as the same might have been used before the making of this act; anything herein contained to the contrary notwithstanding.

XVII. Provided also, and be it enacted, That no person or persons shall be sued, impleaded, molested or troubled for any offence against this act, unless the party offending be sued or impleaded for the same within two years at the most, after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

XVIII. And to the intent no person may avoid his trial at the assizes or general gaol delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there; (2) Be it enacted, that after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any habeas corpus granted in pursuance of this act, but upon any such habeas corpus shall be brought before the judge of assize in open court, who is thereupon to do what to justice shall appertain.

XIX. Provided nevertheless, That after the assizes are ended, any person or persons detained may have his or her habeas corpus according to the direction and intention of this act.

XX. And be it also enacted by the authority aforesaid, That if any information, suit or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general



issue, that they are not guilty or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit or action, and the same matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the same matter in bar, or discharge of such information, suit or action.

XXI. And because many times persons charged with petty treason or felony, or accessories thereunto, are committed upon suspicion only, whereupon they areailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of the peace that committed the persons, and have the examination before them, or to other justices of the peace in the county; (2) Be it therefore enacted, That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

## APPENDIX VII.

BILL OF RIGHTS, PASSED 1 WILLIAM AND MARY, SESS.  
2, CH. 2, 1689.

AN ACT FOR DECLARING THE RIGHTS AND LIBERTIES OF THE SUBJECT,  
AND SETTLING THE SUCCESSION OF THE CROWN.

1 W. & M. 1689.

WHEREAS the lords spiritual and temporal, and commons, assembled at Westminster, lawfully, fully and freely representing all the estates of the people of this realm, did, upon the thirteenth day of February, in the year of our Lord one thousand six hundred and eighty-eight, present unto their majesties then called and known by the name and style of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said lords and commons, in the words following, viz.:

Whereas the late king James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him; did endeavor to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom—

1. By assuming and exercising a power of dispensing with and suspending the laws, and the execution of laws, without consent of parliament.

2. By committing and prosecuting divers worthy prelates,

for humbly petitioning to be excused from concurring to the said assumed power.

3. By issuing and causing to be executed a commission under the great seal for erecting a court called the court of commissioners for ecclesiastical causes.

4. By levying money for and to the use of the crown, by pretence of prerogative, for other time and in other manner than the same was granted by parliament.

5. By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

6. By causing several good subjects, being protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law.

7. By violating the freedom of election of members to serve in parliament.

8. By prosecutions in the court of king's bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.

9. And whereas of late years, partial, corrupt and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

11. And excessive fines have been imposed, and illegal and cruel punishments inflicted.

12. And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late king James the Second having

abdicated the government, and the throne being thereby vacant, his highness the prince of Orange (whom it hath pleased almighty God to make the glorious instrument of delivering the kingdom from popery and arbitrary power) did (by the advice of the lords spiritual and temporal, and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being protestants, and other letters to the several counties, cities, universities, boroughs, and cinque-ports, for the choosing of such persons to represent them as were of right to be sent to parliament, to meet and sit at Westminster, upon the two and twentieth day of January, in this year one thousand six hundred eighty and eight, in order to such an establishment, as that their religion, laws and liberties might not again be in danger of being subverted: upon which letters, elections have been accordingly made;

And thereupon the said lords spiritual and temporal, and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do, in the first place (as their ancestors in like case have usually done), for the vindicating and asserting their ancient rights and liberties, declare—

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

3. That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

4. That levying money for or to the use of the crown, by

pretence of prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal.

5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.

6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

7. That the subjects which are protestants may have arms for their defence suitable to their conditions, and as allowed by law.

8. That election of members of parliament ought to be free.

9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

11. That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason, ought to be freeholders.

12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

13. And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his highness the prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence, That his said highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights and liberties:

II. The said lords spiritual and temporal, and commons, assembled at Westminster, do resolve, That William and Mary, prince and princess of Orange, be, and be declared, king and queen of England, France and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said prince of Orange, in the names of the said prince and princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; and for default of such issue, to the princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of the said prince of Orange. And the lords spiritual and temporal, and commons, do pray the said prince and princess to accept the same accordingly.

III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

I, A. B., do sincerely promise and swear, That I will be

faithful and bear true allegiance to their majesties, king William and queen Mary :

So help me God.

I, A. B., do swear, That I do from my heart abhor, detest and abjure, as impious and heretical, that damnable doctrine and position, That princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm :

So help me God.

IV. Upon which their said majesties did accept the crown and royal dignity of the kingdoms of England, France and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said lords and commons contained in the said declaration.

V. And thereupon their majesties were pleased, That the said lords spiritual and temporal, and commons, being the two houses of parliament, should continue to sit, and with their majesties' royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said lords spiritual and temporal, and commons, did agree and proceed to act accordingly.

VI. Now in pursuance of the premises, the said lords spiritual and temporal, and commons, in parliament assembled; for the ratifying, confirming and establishing the said declaration, and the articles, clauses, matters and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties

asserted and claimed in the said declaration, are the true, ancient and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their majesties and their successors according to the same in all times to come.

Sections VII., VIII., IX., X., are irrelevant.

XI. All which their majesties are contented and pleased shall be declared, enacted and established by authority of this present parliament, and shall stand, remain and be the law of this realm forever; and the same are by their said majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, declared, enacted and established accordingly.

XII. And be it further declared and enacted by the authority aforesaid, That from and after this present session of parliament no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

Section XIII. irrelevant.



## APPENDIX VIII.

A DECLARATION BY THE REPRESENTATIVES OF THE  
UNITED STATES OF AMERICA, IN CONGRESS ASSEMBLED.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for

light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world:—

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions,

to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the meantime, exposed to all the danger of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose, obstructing the laws for the naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined, with others, to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment, for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences :

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies :

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the powers of our governments :

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms ; our repeated petitions

have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members.

## JOHN HANCOCK.

## NEW HAMPSHIRE.

Josiah Bartlett,  
William Whipple,  
Matthew Thornton.

Francis Hopkinson,  
John Hart,  
Abraham Clark.

## PENNSYLVANIA.

MASSACHUSETTS BAY.  
Samuel Adams,  
John Adams,  
Robert Treat Paine,  
Elbridge Gerry.

Robert Morris,  
Benjamin Rush,  
Benjamin Franklin,  
John Morton,  
George Clymer,  
James Smith,  
George Taylor,  
James Wilson,  
George Ross.

## RHODE ISLAND.

Stephen Hopkins,  
William Ellery.

## CONNECTICUT.

Roger Sherman,  
Samuel Huntington,  
William Williams,  
Oliver Wolcott.

## DELAWARE.

Cæsar Rodney,  
George Read,  
Thomas M'Kean.

## MARYLAND.

NEW YORK.  
William Floyd,  
Philip Livingston,  
Francis Lewis,  
Lewis Morris.

Samuel Chase,  
William Paca,  
Thomas Stone,  
Charles Carroll, of Carrollton.

## VIRGINIA.

NEW JERSEY.  
Richard Stockton,  
John Witherspoon,

George Wythe,  
Richard Henry Lee,  
Thomas Jefferson,

Benjamin Harrison,  
Thomas Nelson, Jun.,  
Francis Lightfoot Lee,  
Carter Braxton.

## NORTH CAROLINA.

William Hooper,  
Joseph Hewes,  
John Penn.

## SOUTH CAROLINA.

Edward Rutledge,  
Thomas Hayward, Jun.,  
Thomas Lynch, Jun.,  
Arthur Middleton.

## GEORGIA.

Button Gwinnett,  
Lyman Hall,  
George Walton.

*Resolved,* That copies of the Declaration be sent to the several assemblies, conventions, and committees, or councils of safety; and to the several commanding officers of the continental troops; that it be proclaimed in each of the United States, and at the head of the army.

## APPENDIX IX.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION  
BETWEEN THE STATES.

*To all to whom these presents shall come, we, the undersigned Delegates of the States affixed to our names, send greeting: Whereas the Delegates of the United States of America in congress assembled, did, on the 15th day of November, in the year of our Lord 1777, and in the second year of the Independence of America, agree to certain articles of confederation and perpetual union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz :—*

*Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.*

## ARTICLE I.

The style of this confederacy shall be "The United States of America."



## ARTICLE II.

Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in congress assembled.

## ARTICLE III.

The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

## ARTICLE IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states (paupers, vagabonds, and fugitives from justice excepted) shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant; provided, also, that no imposition, duties, or restriction, shall be laid by any state on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any state shall flee from justice, and be found in any of the United States, he shall,

upon demand of the governor, or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings, of the courts and magistrates of every other state.

#### ARTICLE V.

For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No state shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each state shall maintain its own delegates in any meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States, in congress assembled, each state shall have one vote.

Freedom of speech or debate in congress shall not be impeached or questioned in any court or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

## ARTICLE VI.

No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation, or alliance, whatever between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts, or duties, which may interfere with any stipulations in treaties entered into by the United States in congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in congress assembled for the defence of such state, or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as in the judgment of the United States in congress assembled shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide, and have constantly ready for use in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No state shall engage in any war without the consent of

the United States in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the United States in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom, or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in congress assembled shall determine otherwise.

#### ARTICLE VII.

When land-forces are raised by any state for the common defence, all officers of, or under the rank of colonel shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

#### ARTICLE VIII.

All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state granted to, or surveyed for any person, as such land, and the buildings and improvements thereon,

shall be estimated according to such mode as the United States in congress assembled shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in congress assembled.

#### ARTICLE IX.

The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article ; of sending and receiving ambassadors ; entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever ; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated ; of granting letters of marque and reprisal in times of peace ; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise, between two or more states, concerning boundary, jurisdiction, or any other cause whatever—which authority shall always be exercised in the manner following : Whenever the legislative or executive authority, or lawful agent, of any state in controversy with

another shall present a petition to congress, stating the matter in question and praying for a hearing, notice thereof shall be given, by order of congress, to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but, if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one (the petitioners beginning), until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and the sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall, nevertheless, proceed to pronounce sentence or judgment, which shall in like manner be final and decisive—the judgment, or sentence, and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned; provided that every com-

missioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward;" provided, also, that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions, as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated—establishing or regulating post-offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—mak-

ing rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in congress assembled, shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in congress assembled: But if the United States, in congress assembled, shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such state, unless the le-



gislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled.

The United States in congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised; nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in congress assembled.

The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

## ARTICLE X.

The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States in congress assembled, by the consent of nine states, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states, in the congress of the United States assembled, is requisite.

## ARTICLE XI.

Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

## ARTICLE XII.

All bills of credit emitted, moneys borrowed, and debts contracted by, or under the authority of congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

## ARTICLE XIII.

Every state shall abide by the determinations of the United States in congress assembled, on all questions which by this confederation is submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them;

unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislatures of every state.

*And whereas*, it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, ~~to~~ approve of, and to authorize us to ratify the said articles of confederation and perpetual union: Know Ye, that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In witness whereof we have hereunto set our hands in congress. Done at Philadelphia in the state of Pennsylvania, the ninth day of July in the year of our Lord 1778, and in the third year of the Independence of America.

On the part and behalf of the state of New Hampshire:  
Josiah Bartlett,

John Wentworth, Jun.,  
Aug. 8, 1778.

On the part and behalf of the state of Massachusetts Bay:

John Hancock,  
Samuel Adams,  
Elbridge Gerry,

Francis Dana,  
James Lovell,  
Samuel Holten.

On the part and behalf of the state of Rhode Island and Providence Plantations:

William Ellery,	John Collins.
Henry Marchant,	

On the part and behalf of the state of Connecticut:

Roger Sherman,	Titus Hosmer,
Samuel Huntington,	Andrew Adams.
Oliver Wolcott,	

On the part and behalf of the state of New York:

Jas. Duane,	William Duer,
Fras. Lewis,	Gouv. Morris.

On the part and behalf of the state of New Jersey, November 26, 1778:

Jno. Witherspoon,	Nathl. Scudder.
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On the part and behalf of the state of Pennsylvania:

Robt. Morris,	William Clingan,
Daniel Roberdeau,	Joseph Reed,
Jona. Bayard Smith,	22d July, 1778.

On the part and behalf of the state of Delaware:

Tho. M <sup>c</sup> Kean, Feb. 12, 1779,	Nicholas Van Dyke.
John Dickinson, May 5, 1779,	

On the part and behalf of the state of Maryland:

John Hanson,	Daniel Carroll,
March 1, 1781,	March 1, 1781.

On the part and behalf of the state of Virginia:

Richard Henry Lee,	Jno. Harvie,
John Banister,	Francis Lightfoot Lee.
Thomas Adams,	

On the part and behalf of the state of North Carolina :  
John Penn, Corns. Harnett,  
July 21, 1778, Jno. Williams.

On the part and behalf of the state of South Carolina :  
Henry Laurens, Richd. Hutson,  
William Henry Drayton, Thos. Hayward, Jun.  
Jno. Mathews,

On the part and behalf of the state of Georgia :  
Jno. Walton, Edwd. Telfair,  
24th July, 1778, Edwd. Langworthy.

## APPENDIX X.

## CONSTITUTION OF THE UNITED STATES OF AMERICA.

WE, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

## ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall

be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker, and other officers; and shall have the sole power of impeachment.

SECTION 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof

may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of President of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION 4. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. Each house shall be the judge of the elec-



tions, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return; in which case, it shall not be a law. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him; or, being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. The congress shall have power

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and ge-

neral welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads:

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the supreme court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the

authority of training the militia according to the discipline prescribed by congress :

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in con-

sequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

#### ARTICLE II.

SECTION 1: The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[<sup>1</sup> The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of

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<sup>1</sup> This clause within brackets has been superseded and annulled by the 12th amendment, on page 28.

the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president; and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.”

SECTION 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The president, vice-president, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts



as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies, to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two

witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason ; but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

#### ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3. New states may be admitted by the congress into this Union ; but no new state shall be formed or erected within the jurisdiction of any other state ; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or

other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

#### ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

#### ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the Confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and

the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

#### ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

DONE in convention, by the unanimous consent of the states present; the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names,

GEO. WASHINGTON,

*President and deputy from Virginia.*

[Here follow the names of the signers from the different states. See next page for additions and amendments.]

*Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.*

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment

of a grand-jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

## ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

## ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## ARTICLE IX.

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

## ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

## ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

## ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in presence of the senate and house of representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representa-

tion from each state having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed ; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president ; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.



## APPENDIX XI.

FRENCH CHARTER OF LOUIS XVIII. AND THAT ADOPTED  
IN THE YEAR 1830.

If the space permitted it I would have given all the French constitutions, from the first in the first revolution to that now called the constitution of the empire. As it is, I must content myself with a collection, beginning with the charter granted by Louis the Eighteenth.

The following is the charter of 1830, as I translated it in that year, for a work published in Boston, under the title of Events in Paris, during the 26th, 27th, 28th and 29th of July, translated from the French.

This charter of August 8, 1830, is in substance the charter of Louis XVIII. with such changes as the chambers adopted in favor of liberty. The new articles, or the amendments of the old ones, are printed in italics, and the old reading or suppressed articles are given in notes, so that the paper exhibits both the charters.

## FRENCH CHARTER OF 1830.

The whole preamble of the ancient charter was suppressed, as containing the principle of concession and *octroi* (grant), incompatible with that of the acknowledgment of national sovereignty.

The following is the substitution of the preamble :

DECLARATION OF THE CHAMBER OF DEPUTIES.

The chamber of deputies, taking into consideration the imperious necessity which results from the events of the 26th, 27th, 28th and 29th of July, and the following days ; and from the situation in which France is placed in consequence of the violation of the constitutional charter :

Considering, moreover, that by this violation, and the heroic resistance of the citizens of Paris, his majesty Charles X., his royal highness Louis-Antoine, dauphin, and all the members of the senior branch of the royal house are leaving, at this moment, the French territory—

Declares that the throne is vacant *de facto et de jure*, and that it is necessary to fill it.

The chamber of deputies declares secondly, that according to the wish, and for the interest of the French people, the preamble of the constitutional charter is suppressed, as wounding the national dignity in appearing to grant to the French rights which essentially belong to them ; and that the following articles of the same charter ought to be suppressed or modified in the following manner.

Louis Philippe, King of the French, to all to whom these presents shall come, greeting :

We have ordained and ordain, that the constitutional charter of 1814, as amended by the two chambers on the 7th August, and adopted by us on the 9th, be published anew in the following terms :

PUBLIC LAW OF THE FRENCH.

ART. 1. Frenchmen are equal before the law, whatever otherwise may be their titles or their rank.

ART. 2. They contribute in proportion to their fortunes to the charges of the state.

ART. 3. They are all equally admissible to civil and military employments.

ART. 4. Their individual liberty is equally guaranteed. No person can be either prosecuted or arrested, except in cases provided for by the law, and in the form which it prescribes.

ART. 5. Each one may profess his religion with equal liberty, and shall receive for his religious worship the same protection.

ART. 6. *The ministers of the catholic, apostolic, and Roman religion, professed by the majority of the French, and those of other christian worship, receive stipends from the public treasury.*<sup>1</sup>

ART. 7. Frenchmen have the right of publishing and causing to be printed their opinions, provided they conform themselves to the laws.

*The censorship can never be re-established.*<sup>2</sup>

ART. 8. All property is inviolable, without exception of that which is called *national*, the law making no difference between them.

ART. 9. The state can exact the sacrifice of property for the good of the public, legally proved, but with a previous indemnity.

ART. 10. All examination into the opinions and votes

<sup>1</sup> This article 6 is substituted for the articles 6 and 7 of the old charter, which ran thus:

6. However, the catholic, apostolic and Roman religion, is the religion of the state.

7. The ministers of the catholic, apostolic and Roman religion, and those of other christian confessions, alone receive stipends from the public treasury.

<sup>2</sup> Article 8 of the old charter:

The French have the right to publish and to cause to be published their opinions, conforming themselves to the laws, which shall prevent the abuse of this liberty.

given before the restoration are interdicted, and the same oblivion is commanded to be adopted by the tribunals and by the citizens.

ART. 11. The conscription is abolished. The method of recruiting the army for land and sea is to be determined by the law.

#### FORMS OF THE KING'S GOVERNMENT.

ART. 12. The person of the king is inviolable and sacred. His ministers are responsible. To the king alone belongs executive power.

ART. 13. The king is the supreme head of the state; commands the forces by sea and by land; declares war, makes treaties of peace and alliance and of commerce; he appoints to all offices in public administration, and makes all regulations necessary for the execution of the laws, *without ever having power either to suspend the laws themselves, or dispense with their execution.*

*Nevertheless, no foreign troops can be admitted into the service of the state without an express law.<sup>3</sup>*

ART. 14. The legislative power is to be exercised collectively by the king, the chamber of peers, and the chamber of deputies.<sup>4</sup>

ART. 15. *The proposition of the laws belong to the king, to the chamber of peers, and to the chamber of deputies.*

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<sup>3</sup> Article 14 of the old charter:

The king is the supreme head of the state, commands the forces by land and sea, declares war, makes treaties of peace, alliance and commerce, appoints to all offices of public administration, and makes rules and orders necessary for the execution of the laws and the safety of the state.

<sup>4</sup> There was in article 15 of the old charter: and the chamber of deputies of the departments. These three last words have been suppressed.

*Nevertheless, all the laws of taxes are to be first voted by the chamber of deputies.<sup>5</sup>*

ART. 16. Every law is to be discussed and freely voted by the majority of each of the two chambers.

ART. 17. *If a proposed law be rejected by one of the three powers, it cannot be brought forward again in the same session.<sup>6</sup>*

ART. 18. The king alone sanctions and promulgates the laws.

ART. 19. The civil list is to be fixed for the duration of the reign of the legislative assembly after the accession of the king.

#### OF THE CHAMBER OF PEERS.

ART. 20. The chamber of peers is to form an essential portion of the legislative power.

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<sup>5</sup> Art. 15 is in the place of art. 16 and 17 of the old charter, which were thus:

Art. 16. The king proposes the law.

Art. 17. The proposition of the law is carried, at the pleasure of the king, to the chamber of peers or that of the deputies, except the law of taxes, which is to be directed to the chamber of deputies.

<sup>6</sup> Art. 17 is substituted for articles 19, 20 and 21, suppressed as useless, after the preceding provisions. They were the following:—

Art. 19. The chambers have the right to petition the king to propose a law on any subject whatever, and to indicate what seems to them proper the law ought to contain.

Art. 20. This request may be made by each of the chambers, but after having been discussed in secret committee; it is not to be sent to the other chamber, by that which proposes, until after the elapse of ten days.

Art. 21. If the proposition is adopted by the other chamber, it is to be laid before the king; if it is rejected, it cannot be presented again in the same session.

ART. 21. It is convoked by the king at the same time as the chamber of deputies. The session of one begins and ends at the same time as that of the other.

ART. 22. Any assembly of the chamber of peers, which should be held at a time which is not that of the session of the chamber of deputies, is illicit, and null of full right, *except the only case in which it is assembled as a court of justice, and then it can only exercise judicial functions.*<sup>7</sup>

ART. 23. The nomination of the peers of France belongs to the king. Their number is unlimited; he can vary their dignities, and name them peers for life, or make them hereditary at his pleasure.

ART. 24. Peers can enter the chamber at twenty-five years of age, but have only a deliberative voice at the age of thirty years.

ART. 25. The chamber of peers is to be presided over by the chancellor of France; and in his absence, by a peer named by the king.

ART. 26. The princes of blood are to be peers by right of birth. They are to take their seats immediately behind the president.<sup>8</sup>

<sup>7</sup> This is article 26 of the old charter, augmented by this provision, which was not in the former, and the words following have been suppressed; or that it should be ordained by the king.

<sup>8</sup> Art. 30 of the old charter:

The members of the royal family and the princes of the blood, are peers by the right of birth; they sit immediately behind the president; but they have no deliberative voice before their twenty-fifth year.

Art. 31, was thus:

The princes cannot take their seat in the chamber, but by order of the king, expressed for each session by a message, under penalty of rendering everything null which has been done in their presence. Suppressed.

ART. 27. *The sittings of the chamber of peers are public as that of the chamber of deputies.*<sup>9</sup>

ART. 28. The chamber of peers takes cognizance of high treason, and of attempts against the security of the state, which is to be defined by the law.

ART. 29. No peer can be arrested but by the authority of the chamber, or judged but by it in a criminal matter.

#### OF THE CHAMBER OF DEPUTIES.

ART. 30. The chamber of deputies will be composed of deputies elected by the electoral colleges; the organization of which is to be determined by law.<sup>10</sup>

ART. 31. The deputies are to be elected for five years.<sup>11</sup>

ART. 32. No deputy can be admitted into the chamber till he has attained the age of *thirty years, and if he does not possess the other conditions prescribed by the law.*<sup>12</sup>

ART. 33. If, however, there should not be in the department fifty persons of the age specified *paying the amount of taxes fixed by law*, their number shall be completed from the persons who pay the greatest amount of taxes under the amount fixed by law.<sup>13</sup>

<sup>9</sup> All deliberations of the chamber of peers are secret. Art. 32 of the old charter.

<sup>10</sup> Art. 36 was thus:

Every department shall have the same number of deputies which it has previously had.—Suppressed.

<sup>11</sup> Art. 37 of the old charter:

The deputies shall be elected for five years, and in such a way that the chamber is renewed each year by a fifth.

<sup>12</sup> Art. 38 of the old charter:

No deputy can be admitted into the chamber if he is not forty years old, and if he does not pay direct taxes of 1000 francs.

<sup>13</sup> Article 39 of the old charter:

If, nevertheless, there should not be in the department fifty persons of the indicated age, paying at least 1000 francs, direct taxes,

ART. 34. *No person can be an elector if he is under twenty-five years of age ; and if he does not possess all the other conditions determined by the law.*<sup>14</sup>

ART. 35. The presidents of the electoral colleges are elected by the electors.<sup>15</sup>

ART. 36. The half at least of the deputies are to be chosen from those who have their political residence in the departments.

ART. 37. The president of the chamber of deputies is to be elected by the chamber itself at the opening of each session.<sup>16</sup>

ART. 38. The sittings of the chamber are to be public, but the request of five members will be sufficient that it forms itself into a secret committee.

ART. 39. The chamber divides itself into *bureaux* (committees) to discuss the projects of laws, which may have been presented from the king.<sup>17</sup>

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their number will be completed by those who pay the highest taxes under 1000 francs ; and these may be elected concurrently with the others.

<sup>14</sup> Art. 40 of the old charter :

The electors who concur in electing the deputy, cannot have the right of suffrage, if they do not pay a direct tax of 800 francs ; and if they are less than thirty years of age.

<sup>15</sup> Art. 41 of the old charter :

The presidents of the electoral colleges shall be nominated by the king, and be, by right, members of the college:

<sup>16</sup> Art. 43 of the old charter :

The president of the chamber of deputies is nominated by the king, from a list of five members, presented by the chamber.

<sup>17</sup> In consequence of the initiative, art. 46 and 47 are suppressed, which were thus :

46. No amendment can be made to a law, if it has not been proposed or consented to by the king, and if it has not been sent back and discussed by the bureaux.

47. The chamber of deputies receives all propositions of taxes ;



ART. 40. *No tax can be established nor imposed, if it has not been consented to by the two chambers, and sanctioned by the king.*

ART. 41. The land and house tax can only be voted for one year. The indirect taxes may be voted for many years.

ART. 42. The king convokes every year the two chambers, he prorogues them, and may dissolve that of the deputies; but in this case he must convoke a new one within the period of three months.

ART. 43. No bodily restraint can be exercised against a member of the chamber during the session, nor for six weeks which precede or follow the session.

ART. 44. No member of the chamber can be, during the session, prosecuted or arrested in a criminal matter, except taken in the act, till after the chamber has permitted his arrest.

ART. 45. Every petition to either of the chambers must be made in writing. The law interdicts its being carried in person to the bar.

#### OF THE MINISTERS.

ART. 46. The ministers can be members of the chamber of peers or the chamber of deputies.

They have, moreover, their entrance into either chamber, and are entitled to be heard when they demand it.

ART. 47. The chamber of deputies has the right of impeaching the ministers; or of transferring them before the chamber of peers, which alone has the right to judge them.<sup>28</sup>

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only after these have been consented to, they may be carried to the chamber of peers.

<sup>28</sup> Article 56 of the old charter is suppressed; it ran thus:

They cannot be accused except for treason or peculation. Particular laws will specify this kind of offences, and will determine how they are to be prosecuted.

## JUDICIAL REGULATIONS.

ART. 48. All justice emanates from the king; it is administered in his name by the judges, whom he nominates, and whom he institutes.

ART. 49. The judges named by the king are immovable.

ART. 50. The ordinary courts and tribunals existing are to be maintained, and there is to be no change but by virtue of a law.

ART. 51. The actual institution of the judges of commerce is preserved.

ART. 52. The office of justice of peace is equally preserved. The justices of peace, though named by the king, are not immovable.

ART. 53. No one can be deprived of his natural judges.

ART. 54. There cannot, in consequence, be extraordinary committees and tribunals created, *under whatever title or denomination this ever might be.*<sup>19</sup>

ART. 55. The debates will be public in criminal matters, at least when the publicity will not be dangerous to order and decency, and in that case the tribunal is to declare so by a distinct judgment.

ART. 56. The institution of juries is to be preserved; the changes which a longer experience may render necessary can only be effected by a law.

ART. 57. The punishment of confiscation of goods is abolished, and cannot be re-established.

ART. 58. The king has the right to pardon and to commute the punishment.

ART. 59. The civil code, and the actual laws existing

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<sup>19</sup> Art. 68 of the old charter:

In consequence there cannot be created extraordinary committees and tribunals. The *juridictions previales*, if their re-establishment should be found necessary, are not comprised under this denomination.

that are not contrary to the present charter, will remain in full force until they shall be legally abrogated.

PARTICULAR RIGHTS GUARANTEED BY THE STATE.

ART. 60. The military in actual service, retired officers and soldiers, widows, officers and soldiers on pension; are to preserve their grades, honors and pensions.

ART. 61. The public debt is guaranteed. Every sort of engagement made by the state with its creditors is to be inviolable.

ART. 62. The old nobility retake their titles. The new preserve theirs. The king creates nobles at his pleasure; but he only grants to them rank and honors, without any exemption from the charges and duties of society.

ART. 63. The legion of honor is to be maintained. The king shall determine its internal regulations and the decorations.

ART. 64. The colonies are to be governed by *particular laws*.<sup>20</sup>

ART. 65. The king and his successors shall swear, at their accession, *in presence of the two chambers*, to observe faithfully the present constitutional charter.<sup>21</sup>

ART. 66. *The present charter, and the rights it consecrates, shall be intrusted to the patriotism and courage of the national guard and all the citizens.*

ART. 67. *France resumes her colors. For the future there will be no other cockade than the tri-colored cockade.*<sup>22</sup>

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<sup>20</sup> Art. 73 of the old charter :

The colonies will be governed by particular laws and regulations.

<sup>21</sup> Art. 74 of the old charter :

The king and his successors shall swear at the coronation, to observe faithfully the present constitutional charter.

<sup>22</sup> Arts. 75 and 76 of the old charter are suppressed; they ran thus:

75. The deputies of the departments of France who sat in the

ART. 68. All the creations of peers during the reign of Charles X. are declared null and void.

Article 23 of the charter will undergo a fresh examination during the session of 1831.

ART. 69. There will be provided successively by separate laws, and that with the shortest possible delay, for the following subjects :

1. The extension of the trial by jury to offences of the press, and political offences.

2. The responsibility of ministers and the secondary agents of government.

3. The re-election of deputies appointed to public functions with salaries.

4. The annual voting of the army estimates.

5. The organization of the national guards with the intervention of the national guards in the choice of their officers.

6. Provisions which insure, in a legal manner, the state of officers of each grade, by land and sea.

7. Departmental and municipal institutions founded upon an elective system.

8. Public instruction and the liberty of instruction.

9. The abolition of the double vote; the settling of the electoral conditions, and that of eligibility.

ART. 70. All laws and ordinances, inasmuch as they are contrary to the provisions adopted by the reform of the charter, are from this moment annulled and abrogated.

We give it in command to our courts and tribunals, administrative bodies, and all others, that they observe and

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legislative body, at the last adjournment, will continue to sit in the chamber of deputies, until replaced.

76. The first renewal of the fifth of the chamber of deputies will take place the latest in the year 1816, according to the order established.

maintain the present constitutional charter, cause to be observed, followed and maintained, and in order to render it more known to all, they cause it to be published in all municipalities of the kingdom and everywhere, where it will be necessary, and in order that this be firm and stable for ever, we have caused our seal to be put to it.

Done at the Palais-Royal, at Paris, the 14th day of the month of August, in the year 1830.

Signed      LOUIS PHILIPPE.

By the king:

The Minister Secretary of the State, for the department of the Interior.

Signed      GUIZOT.

Examined and sealed with the great seal:

The keeper of the seals, Minister Secretary of the State for the department of Justice.

Signed      DUPONT (de l'Eure).

## APPENDIX XII.

## CONSTITUTION OF THE FRENCH REPUBLIC.

ADOPTED NOVEMBER, 1848.

IN presence of God, and in the name of the French people, the National Assembly proclaims :

I. France has constituted herself a republic. In adopting that definitive form of government, her proposed aim is to advance with greater freedom in the path of civilization and progress, to insure that the burdens and advantages of society shall be more and more equitably apportioned, to augment the comfort of every individual by the gradual reduction of the public expenses and taxes, and by the successive and constant action of her institutions and laws cause the whole body of citizens to attain, without farther commotion, a constantly increasing degree of morality, intelligence, and prosperity.

II. The French republic is democratic, one and indivisible.

III. It recognizes rights and duties anterior and superior to all positive laws.

IV. Its principles are Liberty, Equality, Fraternity.

Its basis is, Family, Labor, Property, and Public Order.

V. It respects the nationality of foreign states, as it causes its own to be respected. It undertakes no wars with a view of conquest, and never employs its power against the liberty of any people.

VI. Reciprocal duties bind the citizens to the republic and the republic to the citizens.

VII. It is the duty of the citizens to love their country, serve the republic, and defend it at the hazard of their lives, to participate in the expenses of the state, in proportion to their property; to secure to themselves, by their labor, the means of existence, and, by prudent forethought, provide resources for the future, to co-operate for the common welfare by fraternally aiding each other, and in the preservation of general order by observing the moral and written laws which regulate society, families, and individuals.

VIII. It is the duty of the republic to protect the citizen in his person, his family, his religion, his property, and his labor, and to bring within the reach of all that education which is necessary to every man; it is also its duty, by fraternal assistance, to provide the means of existence to necessitous citizens, either by procuring employment for them, within the limits of its resources, or by giving relief to those who are unable to work and who have no relatives to help them.

For the fulfilment of all these duties, and for the guarantee of all these rights, the National Assembly, faithful to the traditions of the great Assemblies by whom the French revolution was inaugurated, decrees the constitution of the republic, as following:

## CONSTITUTION.

### CHAPTER I.

#### *Of Sovereignty.*

ART. 1. The sovereignty exists in the whole body of French citizens. It is inalienable and imprescriptible. No individual, no fraction of the people can arrogate to themselves its exercise.

## CHAPTER II.

*Rights of Citizens guaranteed by the Constitution.*

ART. 2. No person can be arrested or detained, except as prescribed by law.

ART. 3. The dwelling of every person inhabiting the French territory is inviolable, and cannot be entered except according to the forms and in the cases provided against by law.

ART. 4. No one shall be removed from his rightful judges—no commissions or extraordinary tribunals can be created under any pretext, or by any denomination whatsoever.

ART. 5. The penalty of death for political offences is abolished.

ART. 6. Slavery cannot exist upon any French territory.

ART. 7. Every one may freely profess his own religion, and shall receive from the state equal protection in the exercise of his worship. The ministers of the religions at present recognized by law, as well as those which may be hereafter recognized, have the right to receive an allowance from the state.

ART. 8. Citizens have the right of associating together and assembling peaceably and unarmed, in order to petition or manifest their ideas by means of the press or otherwise. The exercise of these rights can only be limited by the rights or the liberty of others, or for the public security. The press cannot in any case be subjected to censorship.

ART. 9. Education is free. The liberty of teaching is to be exercised according to the capacity and morality determined by conditions of the laws, and under the supervision of the state. This superintendence is to be extended to all establishments of education and instruction, without any exception.

ART. 10. All citizens are equally admissible to all public



employments, without other reason of preference than merit, and according to the conditions to be determined by law. All titles of nobility, all distinctions of birth, class or *caste*, are abolished forever.

ART. 11. All descriptions of property are inviolable; nevertheless, the state may demand the sacrifice of property for reasons of public utility, legally proved, and in consideration of a just and previous indemnity.

ART. 12. The confiscation of property can never be re-established.

ART. 13. The constitution guarantees to citizens the freedom of labor and of industry. Society favors and encourages the development of labor by gratuitous primary instruction, by professional education, by the equality of rights between the employer and the workman, by institutions for the deposit of savings and those of credit, by agricultural institutions; by voluntary associations, and the establishment by the state, the departments and the communes, of public works proper for the employment of unemployed laborers. Society also will give aid to deserted children, to the sick, and to the destitute aged who are without relatives to support them.

ART. 14. The public debt is guaranteed. Every species of engagement made by the state with its creditors is inviolable.

ART. 15. All taxes are imposed for the common good. Every one is to contribute in proportion to his means and fortune.

ART. 16. No tax can be levied or collected except by virtue of the law.

ART. 17. Direct taxation is only awarded for one year. Indirect taxes may be awarded for several years.

## CHAPTER III.

*Of Public Power.*

ART. 18. All public powers, whatever they may be, emanate from the people. They cannot be delegated by hereditary descent.

ART. 19. The separation of powers is the first principle of a free government.

## CHAPTER IV.

*Of the Legislative Power.*

ART. 20. The French people delegate the legislative power to one sole assembly.

ART. 21. The total number of representatives of the people shall be 750, including the representatives from Algeria and the French colonies.

ART. 22. This number shall be increased to 900 for assemblies called together to revise the constitution.

ART. 23. Population is the basis for election.

ART. 24. Suffrage is direct and universal. The act of voting is by secret ballot.

ART. 25. All Frenchmen aged twenty-one, and in the enjoyment of their civil and political rights, are electors, without property qualifications of any kind.

ART. 26. All electors are eligible to be elected without reference to property qualifications or to place of abode, who are twenty-five years of age.

ART. 27. The electoral law will determine the causes which may deprive a French citizen of the right of electing or being elected. It will designate those citizens who, exercising or after having exercised official functions in a department or territory, cannot be elected there.

ART. 28. The holding of any remunerating public office is incompatible with the trust of a representative of the

people. No member of the national assembly can be nominated or raised to public offices, receiving salary, the appointment to which is in the gift of the executive, during the continuance of the legislature. Exceptions to the regulations contained in the two preceding paragraphs are to be settled by the organic electoral law.

ART. 29. The conditions of the preceding article are not applicable to assemblies elected for the revision of the constitution.

ART. 30. The elections for representatives shall be by departments, and by ballot. The electors shall vote at the chief place of their district; nevertheless the district may be, from local causes, divided into several subdivisions, under the forms and in conformity with the conditions to be determined by the electoral law.

ART. 31. The national assembly is elected for the period of three years, to be then wholly renewed. Forty-five days at least before the term of the legislature, a law shall be passed to fix the period of the new elections. If no law is passed within the time prescribed by the preceding paragraph, the electors shall have full right to assemble and vote on the thirtieth day preceding the close of the legislature. The new assembly is convoked by full right for the day following that on which the trust of the preceding assembly expires.

ART. 32. The assembly is permanent; nevertheless it may adjourn to any period which it shall determine. During the continuance of the prorogation, a commission, composed of members of committees, and twenty-five representatives appointed by the assembly, by ballot, having an absolute majority, will have the right to convoke the assembly, in cases of emergency. The president of the republic has also the right to convoke the assembly. The national assembly will determine the place where it shall

hold its sessions, and will direct the number and description of the military forces which shall be appointed for its security, and have them at its order.

ART. 33. Representatives may be re-elected.

ART. 34. The members of the national assembly are the representatives, not of the department which nominates them, but of the whole of France.

ART. 35. They cannot receive imperative instructions.

ART. 36. The persons of the representatives of the people are inviolable. They cannot be pursued, accused, nor condemned, at any time, for opinions uttered within the assembly.

ART. 37. They cannot be arrested for criminal offences, excepting when taken in the very fact, nor prosecuted, until after permission granted for such purpose by the assembly. In case of an arrest in the very fact, the matter shall immediately be referred to the assembly, which shall authorize or refuse the continuation of the prosecution. The above regulation to apply also to the case of citizens imprisoned at the time of being named representatives.

ART. 38. Every representative of the people is to receive a remuneration, which he is not at liberty to renounce.

ART. 39. The sittings of the assembly are to be public. Nevertheless, the assembly may form itself into a secret committee, on the requisition of a number of representatives, as settled by the rules. Each representative has the right of initiating parliamentary measures, which he will do according to the forms determined by the regulations.

ART. 40. The presence of half the members, and also one over, is necessary to vote on any law.

ART. 41. No bill (except in cases of urgency) shall be passed till after it has undergone three readings, at intervals of not less than five days between each reading.

ART. 42. Every proposition, the object of which is to

declare the urgency of a measure, must be preceded by an explanation of motives. If the assembly is of opinion to accede to the proposition, it will fix the time when the report upon the necessity of the case shall be represented. On this report, if the assembly admit the urgency of the case, it will declare it and fix the time of the debate. If it decides against the urgency of the case, the motion will have to go through the usual course.

#### CHAPTER V.

##### *Of the Executive Power.*

ART. 43. The French people delegate the executive power to a citizen, who shall receive the title of president of the republic.

ART. 44. The president must be born a Frenchman, thirty years of age at least, and must never have lost the quality of Frenchman.

ART. 45. The president of the republic shall be elected for four years, and shall not be eligible for re-election until after an interval of four years. Neither shall the vice-president, nor any of his relations or kindred of the president, to the sixth degree inclusive, be eligible for re-election after him, within the same interval of time.

ART. 46. The election shall take place on the second Sunday in the month of May. If, in the event of death or resignation, or from any other cause, a president be elected at any other period, his power shall expire on the second Sunday of the month of May, in the fourth year following his election. The president shall be elected by secret ballot, and by an absolute majority of votes, by the direct suffrage of all the electors of the French departments and of Algeria.

ART. 47. The records of the electoral operations shall be transmitted immediately to the national assembly, which

shall determine without delay upon the validity of the election, and shall proclaim the president of the republic. If no candidate shall have obtained more than one-half of the votes given, and at the least two millions of votes, or if the conditions required by article 44 are not fulfilled, the national assembly shall elect the president of the republic by an absolute majority, and by ballot, from among the five candidates eligible who shall have obtained the greatest number of votes.

ART. 48. Before entering upon his functions, the president of the republic shall, in the presence of the assembly, take an oath of the tenor following: "In presence of God, and before the French people, represented by the national assembly, I swear to remain faithful to the democratic republic, one and indivisible, and to fulfil all the duties which the constitution imposes upon me."

ART. 49. He shall have the right of presenting bills through the ministers in the national assembly. He shall watch over and secure the execution of the laws.

ART. 50. He shall have the disposal of the armed force, without ever being allowed to command it in person.

ART. 51. He cannot cede any portion of the territory, nor dissolve or prorogue the national assembly, nor suspend the operation of the constitution and the laws.

ART. 52. He shall annually present, by a message to the national assembly, an exposition of the general state of the affairs of the republic.

ART. 53. He shall negotiate and ratify treaties. No treaty shall be definitive until after it has been approved by the national assembly.

ART. 54. He shall watch over the defence of the state, but he shall not undertake any war without the consent of the national assembly.

ART. 55. He shall possess the right of pardon; but he

shall not have the power to exercise this right until after he has taken the advice of the council of state. Amnesties shall only be granted by an express law. The president of the republic, the ministers, as well as all other persons condemned by the high court of justice, can only be pardoned by the national assembly.

ART. 56. The president of the republic shall promulgate the laws in the name of the French people.

ART. 57. Laws of emergency shall be promulgated three days after, and other laws one month after their passing, counting from the day on which they were passed by the national assembly.

ART. 58. Previous to the day fixed for the promulgation, the president may, by a message assigning reasons therefor, demand a reconsideration of the law. The assembly shall then reconsider it, its resolution becomes definitive, and shall be transmitted to the president of the republic. In such a case, the promulgation shall be made within the delay allowed to laws of emergency.

ART. 59. In default of the promulgation of laws by the president, within the period fixed by the preceding articles, the president of the assembly shall provide for their due promulgation.

ART. 60. The credentials of envoys and ambassadors from foreign powers shall be addressed to the president of the republic.

ART. 61. He shall preside at all national solemnities.

ART. 62. He shall be furnished with a residence at the expense of the republic, and shall receive an allowance of six hundred thousand francs per annum.

ART. 63. He shall reside in the place in which the national assembly holds its sessions, and may not leave the continental territory of the republic without being authorized by law so to do.

ART. 64. The president of the republic shall have power to appoint and revoke the appointment of the ministers. He shall appoint and revoke, in a council of ministers, the diplomatic agents, commanders-in-chief of the armies of the republic by sea and land, prefects and the chief commandant of the national guards of the Seine, the governors of Algeria and the other colonies, the attorney-general and all other functionaries of superior rank. He shall appoint and dismiss, at the suggestion of the competent minister, according to the terms and conditions fixed by law, all other officers and functionaries of the government of secondary rank.

ART. 65. He shall have the right of suspending, for a period not exceeding three months, the agents of the executive power elected by the people. He shall not be able to dismiss them unless by the advice of the council of state. The law will determine the case in which agents, having been dismissed, may be declared not to be eligible again for the same office. Such a declaration of ineligibility can only be pronounced by a formal judgment.

ART. 66. The number of ministers and their several powers, duties and emoluments shall be settled by the legislative power.

ART. 67. The acts of the president, excepting those by which he appoints or dismisses the ministers of the republic, shall be of no effect, unless countersigned by a minister.

ART. 68. The president of the republic, the ministers, the agents, and all the other depositaries of public authority, shall be responsible, each in so far as he is concerned, for all the acts of the government and of the administration. Every measure by which the president of the republic shall dissolve or prorogue the assembly, or interpose any obstacle to the exercise of its public trust, shall be deemed a crime of high treason. By this sole act, the president becomes divested of his functions, and the people are bound not to



yield obedience to him; the executive power is thereby transferred in full authority to the national assembly. The judges of the high court of justice shall immediately assemble, on pain of forfeiture of their offices. They shall call together a jury, in some place to be by them designated, in order to proceed to trial and judgment upon the president and his accomplices; and they shall themselves appoint a magistrate to be charged with the functions of state attorney. A law shall determine the other cases of responsibility, as well as the forms and conditions of the prosecution of them.

ART. 69. The ministers shall have admission into the national assembly, and shall be heard whenever they require it, and they may also obtain the assistance of commissioners, who shall have been appointed by a decree of the president of the republic.

ART. 70. There shall be a vice-president of the republic, to be appointed by the national assembly, from a list of three candidates presented by the president within the month succeeding his election. The vice-president shall take the same oath as the president. The vice-president shall not be appointed from among the relations or kindred of the president to the sixth degree inclusive. Should the president by any cause be prevented from officiating, the vice-president will represent him for the time being. If the presidency shall become vacant by the death of the president, his dismissal from office, or from other causes, a new election for president shall take place within a month.

#### CHAPTER VI.

##### *Of the Council of State.*

ART. 71. There shall be a council of state, of which the vice-president of the republic shall of right be the president.

ART. 72. The members of this council shall be appointed for six years by the national assembly. The half of this

council shall be renewed in the first two months of each new legislature, by secret ballot, and by an absolute majority. They shall be indefinitely re-eligible.

ART. 73. Such of the members of the council of state, who shall have been appointed from among the members of the assembly, shall be immediately replaced as representatives of the people.

ART. 74. The members of the council of state cannot be dismissed, except by the national assembly and at the suggestion of the president.

ART. 75. The council of state shall be consulted upon all bills or laws proposed by the government, which, according to law, must be presented for their previous examination; and also upon parliamentary bills which the assembly may send to them for their examination. It shall prepare the rules of public administration, and will alone make those regulations with regard to which the national assembly have given it a special delegation. It shall exercise over the public administrations all the powers of control and of superintendence which are conferred upon it by law. The law will determine the other powers and duties of the council.

#### CHAPTER VII.

##### *Of the Interior Administration.*

ART. 76. The division of the territory into departments, arrondissements, districts and communes shall be maintained. Their present limits shall not be changed, except by law.

ART. 77. There shall be—1. In each department an administration composed of a prefect, a general council, and a council of prefecture. 2. In each arrondissement, a sub-prefect. 3. In each district, a district-council; nevertheless, only a single district-council shall be established in any city which is divided into several districts. 4. In each

commune, an administration, composed of a mayor, his assistants, and a municipal council.

ART. 78. A law shall determine the composition and duties of the general councils; the district councils, and the municipal councils, as well as, also, the manner of appointing the mayors and their assistants.

ART. 79. The general councils and the municipal councils shall be elected by the direct vote of all citizens living in the department or district; each district shall elect one member of the general council; a special law shall regulate the forms of election in the department of the Seine, in the city of Paris and in cities containing a population of more than twenty thousand souls.

ART. 80. The general councils, the district councils, and the municipal councils may be dissolved by the president of the republic, with the advice of the council of state; the law will fix the period within which a new election shall be held.

#### CHAPTER VIII.

##### *Of the Judiciary Power.*

ART. 81. Justice shall be awarded, gratuitously, in the name of the French people. The proceedings shall be public, except in cases where publicity may be detrimental either to the public order or public morals, in which case the court shall declare the same by a formal judgment.

ART. 82. Trial by jury shall be continued in criminal cases.

ART. 83. The decision upon all political offences, and upon all offences committed by means of the press, appertains exclusively to the jury. The organic laws shall determine the tribunal and powers in relation to offences and defamation against private individuals.

ART. 84. The jury alone shall decide upon the question of damages claimed on account of offences by the press.

ART. 85. The justices of peace and their assistants, the judges of the first instance and of appeal, the members of the court of cassation and of the court of accounts, shall be appointed by the president of the republic, according to a system of candidatureship on conditions which shall be regulated by the organic laws.

ART. 86. The magistrates shall be appointed by the president of the republic.

ART. 87. The judges of the first instance and of appeal, the members of the court of cassation and of the court of accounts shall be appointed for life. They shall not be dismissed or suspended, except after judgment, nor retire with a pension, except for causes, and according to proceedings appointed by law.

ART. 88. The councils of war and of revision of the armies by sea and land, the maritime tribunals, the tribunals of commerce, the *prud'hommes*, and other special tribunals, shall retain their present organization and their present functions, until the law shall decide otherwise.

ART. 89. Conflicts of privileges and duties between the administrative and the judicial authority shall be regulated by a special tribunal, composed of members of the court of cassation and of counsellors of state, to be appointed, every three years, in equal number, by the respective bodies to which they belong. This tribunal shall be presided over by the minister of justice.

ART. 90. Appeals for incompetence, or excess of power against the decrees of the court of accounts, shall be carried before the tribunal of conflictive jurisdiction.

ART. 91. A high court of justice shall decide, without appeal, demur, or recourse of annulment, in all accusations made by the national assembly against the president of the republic or the ministers. It shall likewise, in the same way, try all cases of persons accused of crimes, attempts, or

plots against the internal and external safety of the state, which the assembly may have sent before it. Except in the case provided for in article 68, it shall not be called together unless by decree of the national assembly, which shall also designate the city in which the court shall hold its sittings.

ART. 92. The high court shall be composed of five judges and of thirty-six jurymen. Every year, in the first fifteen days of the month of November, the court of cassation shall appoint from among its members, by secret ballot and an absolute majority, the judges of the high court, the number to be five judges and two supplementary judges. The five judges, who are thus called upon to sit, will themselves select their president. The magistrates performing the functions of the public ministry shall be designated by the president of the republic, and, in the event of the accusation of the president or his ministers, by the national assembly. The jury, to the number of thirty-six, and four supplementary jurymen, shall be taken from among the members of the general councils of the departments. Representatives of the people shall not be competent to form part of these juries.

ART. 93. When a decree of the national assembly shall have ordered the formation of the high court of justice as also in the cases provided for in the 68th article, on the requisition of the president or of one of the judges, the president of the court of appeal, and in default of that court, the president of the tribunal of the first instance of the chief judiciary court of the department, shall draw lots in public assembly for the name of a member of the general council.

ART. 94. On the day appointed for the trial, if there are less than sixty jurymen present, the number shall be filled up by supplementary jurymen, drawn by lot by the presi-

dent of the high court of justice, from among the names of the members of the general council of the department in which the court holds its sitting.

ART. 95. Those jurymen who shall not have given an adequate excuse for absence, shall be condemned to a fine of not less than one thousand francs, and not exceeding ten thousand, and to be deprived of their political rights during five years at the utmost.

ART. 96. Both the accused and the public accuser shall have the right to challenge, as in ordinary cases.

ART. 97. The verdict of the jury pronouncing the accused guilty cannot be rendered except by a majority of two-thirds.

ART. 98. In all cases regarding the responsibility of the ministers, the national assembly may, according to the circumstances, send the accused minister to be tried either before the high court of justice or by the ordinary tribunals for civil indemnities (or damages).

ART. 99. The national assembly and the president of the republic may, in all cases, transmit the examination of the acts of any functionary (except of the president himself) to the council of state, whose report shall be made public.

ART. 100. The president of the republic can only be brought to trial before the high court of justice. Except as is provided for by article 68, he cannot be tried unless upon accusation brought against him by the national assembly, and for crimes and misdemeanors, which shall be determined by law.

#### CHAPTER IX.

##### *Of the Public Forces.*

ART. 101. The public force is instituted for the purpose of defending the state against enemies from without, and to insure, internally, the maintenance of order, and the exe-

cution of the laws. It is composed of the national guard and of the army by sea and by land.

ART. 102. Every Frenchman, save in exceptions determined by the law, owes to his country his services in the army and in the national guard. The privilege of every citizen to free himself from personal military service shall be regulated by the law of recruitment.

ART. 103. The organization of the national guard, and the constitution of the army, shall be regulated by law.

ART. 104. The public force is essentially obedient. No armed force can deliberate.

ART. 105. The public force employed to maintain order in the interior can only act upon the requisition of the constituted authorities, according to the regulations prescribed by the legislative power.

ART. 106. A law shall determine those cases in which the state of siege shall be declared, and shall regulate the forms and determine the effects of such a measure.

ART. 107. No foreign troops can be introduced into the French territory without the previous assent of the national assembly.

#### CHAPTER X.

##### *Special Regulations.*

ART. 108. The legion of honor is maintained; its statutes shall be revised, and made to accord with the constitution.

ART. 109. The territory of Algeria, and of the colonies, is declared to be French territory, and shall be governed by their separate laws until a special law shall place them under the provisions of the present constitution.

ART. 110. The national assembly confides the trust of this present constitution, and the rights it consecrates, to the guardianship and patriotism of every Frenchman.

## CHAPTER XI.

*Of the Revision of the Constitution.*

ART. 111. Whenever, in the last year of a legislature, the national assembly shall have expressed the wish that the constitution should be modified, in whole or in part, this revision shall be entered upon in the following manner: The wish expressed by the assembly shall not be converted into a definitive resolution until after three successive deliberations held upon the subject, at the interval of one month between each deliberation, and the measure shall only be carried by a vote of three-fourths of the assembly. The number of votes must be five hundred at the least. The assembly for revision shall only be appointed for three months. It shall only engage in the special revision for which it has been assembled; nevertheless, in cases of emergency, it may provide for legislative necessities.

## CHAPTER XII.

*Transitory Arrangements.*

ART. 112. The provisions of the codes, laws, and regulations, now in force, and which are not in contradiction with the present constitution, shall remain in force until otherwise provided by law.

ART. 113. All the authorities constituted by the present laws shall continue in the exercise of their present duties until the promulgation of the organic laws which relate to them.

ART. 114. The law of judiciary organization will determine the particular mode for the appointment and first composition of the new tribunals.

ART. 115. After the vote upon the constitution, the constituent national assembly shall proceed to draw up the or-



ganic laws, which shall be determined by a special law for that purpose.

ART. 116. The first election of a president of the republic shall take place in conformity with the special law, passed by the national assembly on the 28th of October, 1848.

## APPENDIX XIII.

## THE PRESENT CONSTITUTION OF FRANCE.

WHEN I wrote the article Constitution for the *Encyclopædia Americana*, which was before the French revolution of 1830, I classed constitutions under three general heads: 1. Those established by the sovereign power, real or so-called. These were subdivided into constitutions established by a sovereign people for their own government, as ours are; and into such as are granted, theoretically at least, by the plenary power of an absolute monarch; such as the then existing French charter was, a fundamental law called by the French *octroyé*. 2. Constitutions formed by contracts between nations and certain individuals whom they accept as rulers on distinct conditions. 3. Constitutions forming a compact between a number of states. The present constitution of France is not included in either of these classes. Its genesis, as the reader well knows, was that, first, an individual acquired absolute power by a conspiracy or coup d'état, then caused the people to vote whether they would grant him plenary power to prescribe a constitution; he received the power by above seven millions of votes, and issued the following document, copied from the constitution which Napoleon the First had prescribed at the beginning of this century. If, then, the reader insists upon calling this a constitution—we certainly do not call France at present a constitutional country—we may call it a constitution

per saltum, for it was in former times one of the different ways of electing a pope, or the head of a great society, such as the Templars, to elect one individual with the right of appointing the chief, and this was called electing per saltum, by a leap. I also divided constitutions into cumulative constitutions such as the constitution of England, or that of ancient Rome, and into enacted (or written) constitutions, such as ours are. The present constitution of France can again be classed neither under the one nor the other head. It may, perhaps, be called decreed, or by any name the reader prefers. It is difficult to find an appropriate name for a thing which is the result of a confused mixture of ideas, of absolutism, popular sovereignty, violence, of breaking of oaths and prescribing of others, of coup d'état, and ratification by those whose work was destroyed by the soldiery, and by the idea of the "incarnation" of popular absolute power in one person. Louis Napoleon has been called the incarnation of a great principle. I do not pretend to find a philosophical name for this product. Probably the whole constitution belongs to the "Napoleonic ideas," of which we read so much at this moment; or we may call it in future an imperial or Cæsarean constitution.

The following, then, is the present French constitution, as it appeared in the official paper, the *Moniteur*, of January 15, 1852, preceded by the Proclamation of Louis Napoleon.

LOUIS NAPOLEON,

PRESIDENT OF THE REPUBLIC,

*In the name of the French People.*<sup>1</sup>

FRENCHMEN! When, in my proclamation of the 2d of December, I stated to you in all sincerity what were, accord-

<sup>1</sup> The reader will find, on a subsequent page, that the whole of this constitution was retained under the empire with the exception of a few passages, relating to the hereditary part of the empire.

ing to my ideas, the vital condition of government in France, I had not the pretension, so common in our days, of substituting a personal theory for the experience of ages. On the contrary, I sought in the past what were the best examples to follow, what men had given them, and what benefit had resulted therefrom.

Having done so, I considered it only logical to prefer the precepts of genius to the specious doctrines of men of abstract ideas. I took as model the political institutions which already, at the beginning of the present century, in analogous circumstances, strengthened society when tottering, and raised France to a high degree of prosperity and grandeur.

I selected as model those institutions which, in place of disappearing at the first breath of popular agitations, were overturned only by all Europe being coalesced against us.

In a word, I said to myself, since France has existed for the last fifty years only in virtue of the administration, military, judicial, religious, and financial organization of the consulate and the empire, why should we not adopt likewise the political institutions of that period? As they were created by the same mind, they ought to bear in themselves the same character of nationality and practical utility.

In fact, as I stated in my proclamation, our present society, it is essential to declare, is nothing else than France regenerated by the revolution of '89 and organized by the emperor. Nothing remains of the old régime but great reminiscences and great benefits. But all that was then organized was destroyed by the revolution, and all that has been organized since the revolution, and which still exists, was done by Napoleon.

We have no longer either provinces, or *pays d'état*, or parliaments, or intendants, or farmers general, or feudal rights, or privileged classes in exclusive possession of civil

and military employments; or different religious jurisdiction.

In so many things incompatible with itself had the revolution effected a radical reform, but without founding anything definitive. The first consul alone re-established the unity, the various ranks, and the veritable principles of government. They are still in vigor.

Thus, the administration of France was intrusted to prefects, sub-prefects, and mayors, who substituted unity for the commissions of the directory; and, on the contrary, the decision of business given to councils from the commune to the department. Thus, the magistracy was strengthened by the immovability of the judges, by the various ranks of the tribunals; justice was rendered more easy by the delimitation of attributions, from the justice of peace to the court of cassation. All that is still existing.

In the same way our admirable financial system, the bank of France, the establishment of budgets, the court of accounts, the organization of police, and our military regulations, date from the same period.

For fifty years it is the code Napoleon which had regulated the interests of citizens amongst themselves; and it is still the concordat which regulates the relations between the state and the church.

In fine, the greatest part of the measures which concern the progress of manufactures, commerce, letters, sciences, and the arts, from the regulations of the theatre Française to those of the institute, from the institution of the prud-hommes to the creation of the legion of honor, were fixed by decrees of that time.

It may then be affirmed that the framework of our social edifice is the work of the emperor; and that it has resisted his fall and three revolutions.

Why, with the same origin, should not the political institutions have the same chances of success?

My conviction was long formed on the point, and it is on that account that I submit to your judgment the principal bases of a constitution, borrowed from that of the year 8. When approved by you, they will become the foundation of our political constitution.

Let us examine what the spirit of them is.

In our country, monarchical as it has been for eight hundred years, the central power has always gone on augmenting. The royalty destroyed the great vassals; the revolutions themselves swept away the obstacles which opposed the rapid and uniform exercise of authority. In this country of centralization, public opinion has unceasingly attributed to the head of the government benefits as well as evils. And so, to write at the head of a charter that that chief is irresponsible, is to be against the public feeling—is to want to establish a fiction, which has three times vanished at the noise of revolutions.

The present constitution, on the contrary, declares that the chief whom you have elected is responsible before you; and that he has always the right to appeal to your judgment, in order that, in solemn circumstances, you may continue to him your confidence, or withdraw it.

Being responsible, his action ought to be free and unshackled. Thence the obligation of his having ministers who may be the honored and puissant auxiliaries of his thought, but who no longer form a responsible council, composed of mutually responsible members, a daily obstacle to the particular impulse of the head of the state, the expression of a policy emanating from the chambers, and by that very circumstance exposed to frequent changes, which prevent all spirit of unity and all application of a regular system.

Nevertheless, the higher a man is placed the more independent he is, and the greater confidence the people have placed in him the more he has need of enlightened and conscientious councils. Thence the creation of a council of state, henceforward a veritable council of the government, first wheel in our organisation, a collection of practical men, elaborating bills in special commissions, discussing them with closed doors, without oratorical ostentation in general assembly, and presenting them afterwards for acceptance to the legislative body.

Thus, the government is free in its movements and enlightened in what it does.

What is now to be the control exercised by the assemblies?

A chamber, which takes the title of legislative body, votes the laws and the taxes. It is elected by the universal suffrage, without *scrutin de liste*. The people, selecting each candidate separately, can more easily appreciate the merits of each.

The chamber is not to be any longer composed of more than about 260 members. That is a first guaranty of the calm of the deliberations, for only too often the inconsistency and ardor of passions have been seen to increase in assemblies in proportion to their number.

The report of the sittings, which is intended to instruct the nation of what is going on, is no longer, as formerly, delivered to the party spirit of each journal; an official publication, drawn up by the care of the president of the chamber, will be alone permitted.

The legislative body discusses freely each law, and adopts or rejects it. But it cannot introduce all of a sudden those amendments which often disarrange the whole economy of a system and the ensemble of the original project. Still more, it does not possess that parliamentary initiative which

was the source of such grave abuses, and which allowed each deputy to substitute himself at every turn for the government, by presenting projects the least carefully studied and inquired into.

The chamber being no longer in presence of the ministers, and the various bills being supported by speakers belonging to the council of state, time is not lost in vain interpellations and passionate debates, the only object of which was to overturn the ministers, in order to place others in their stead.

Thus, then, the deliberations of the legislative body will be independent, but the causes of sterile agitations will have been suppressed, and proper time and deliberation given to each modification of the law. The representatives of the nation will, in fact, maturely perform their serious functions.

Another assembly takes the name of senate. It will be composed of the elements which, throughout the whole country, create legitimate influences—an illustrious name, fortune, talent, and services rendered.

The senate is no longer, like the chamber of peers, the pale reflection of the chamber of deputies, repeating, at some days' interval, the same discussions in another tone. It is the depository of the fundamental compact, and of the liberties compatible with the constitution; and it is only with respect to the grand principles on which is based our society that it examines all the laws, and proposes new ones to the executive power. It intervenes, whether to resolve every grave difficulty which might arise during the absence of the legislative body, or to explain the text of the constitution, or to insure what is necessary for its being acted on. It has the right to annul every arbitrary and illegal act, and, thus enjoying that consideration which belongs to a body exclusively occupied with the examination of great interests,



or the application of grand principles, it occupies in the state the independent, salutary and conservative position of the ancient parliaments.

The senate will not be, like the chamber of peers, transformed into a court of justice; it will preserve its character of supreme moderator; for disfavor always reaches political bodies, when the sanctuary of the legislators becomes a criminal tribunal. The impartiality of the judge is often called in doubt, and he loses a portion of his prestige in public opinion, which sometimes goes the length of accusing him of being the instrument of passion or of hatred.

A high court of justice, chosen from amongst the higher magistrates, having for jurymen members of the councils-general throughout all France, will alone decide in cases of *attentats* against the head of the state and public safety.

The emperor used to say to the council of state: "A constitution is the work of time; and too large a margin cannot be left to ameliorations." Consequently, the present constitution has fixed only what it was impossible to leave uncertain. It has not inclosed within an impassible circle the destinies of a great people; it has left to change a margin sufficiently wide to allow, in great crises, other means of safety to be employed than the disastrous expedient of revolutions.

The senate can, in concert with the government, modify all that is not fundamental in the constitution; but as to the modifications effected in its primary bases, sanctioned by your suffrages, they cannot become definitive until after they have received your ratification.

Thus the people remains always master of its destiny, as nothing fundamental can be effected independently of its will.

Such are the ideas and principles which you have authorized me to carry into application. May the constitution

confer on our country calm and prosperous days ! May it prevent the return of those intestine struggles, in which the victory, however legitimate it may be, is always dearly purchased ! May the sanction, which you have bestowed on my efforts, receive the benediction of heaven ! In that case, peace will be insured at home and abroad, my prayers will be granted, and my mission accomplished !

LOUIS NAPOLEON BONAPARTE.

Palace of the Tuileries, January 14, 1852.

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*Constitution made in virtue of the powers delegated by the French People to Louis Napoleon Bonaparte, by the vote of the 20th and 21st of December, 1851.*

The president of the republic—

Considering that the French people has been called on to pronounce its opinion on the following resolution :

The people wish for the maintenance of the authority of Louis Napoleon Bonaparte, and give him the powers necessary to make a constitution, according to the bases laid down in his proclamation of the 2d December.

Considering that the bases proposed to the acceptance of the people were:—

1. A responsible chief appointed for ten years.
2. Ministers dependent on the executive power alone.
3. A council of state, formed of the most distinguished men, to prepare the laws and support the discussion of them before the legislative body.
4. A legislative body, to discuss and vote the laws, elected by universal suffrage, without *scrutin de liste*, which falsifies the election.
5. A second assembly, formed of the most illustrious men

of the country, as an equi-peising power (*pouvoir pondérateur*), guardian of the fundamental compact and of public liberties.

Considering that the people have replied affirmatively by seven millions five hundred thousand votes,

Promulgates the constitution, the tenor of which is as follows :

#### CHAPTER I.

ART. 1. The constitution admits, confirms, and guarantees the great principles proclaimed in 1789, and which are the bases of the public right of Frenchmen.

#### CHAPTER II.

##### *Forms of the Government of the Republic.*

ART. 2. The government of the French Republic is confided for ten years to Prince Louis Napoleon Bonaparte, the actual president of the republic.

ART. 3. The president of the republic governs by means of ministers, of the council of state, of the senate, and of the legislative body.

ART. 4. The legislative power is exercised collectively by the president of the republic, the senate, and the legislative body.

#### CHAPTER III.

##### *Of the President of the Republic.*

ART. 5. The president of the republic is responsible to the French people, to whom he has always the right to make an appeal.

ART. 6. The president of the republic is the chief of the state; he commands the land and sea forces, declares war, makes treaties of peace, alliance, and commerce, appoints to all employs, and makes the regulations and decrees necessary for the execution of the laws.

ART. 7. Justice is rendered in his name.

ART. 8. He alone has the initiative of laws.

ART. 9. He has the right of granting pardon.

ART. 10. He sanctions and promulgates the laws and the *senatus consultum*.

ART. 11. He presents every year to the senate, and to the legislative body, by a message, the state of the affairs of the republic.

ART. 12. He has the right to declare the state of siege in one or several departments, on condition of referring it to the senate within the shortest possible delay. The consequences of the state of siege are regulated by law.

ART. 13. The ministers depend only on the chief of the state—they are only responsible for the acts of the government as far as they are individually concerned in them; there is no joint responsibility among them, and they can only be impeached by the senate.

ART. 14. The ministers, the members of the senate, of the legislative body, and of the council of state, the officers of the land and sea forces, the magistrates and public functionaries, take the following oath: *I swear obedience to the constitution and fidelity to the president.*

ART. 15. A *senatus consultum* fixes the sum allowed annually to the president of the republic during the whole continuance of his functions.

ART. 16. If the president of the republic dies before the expiration of his term of office, the senate is to convoke the nation, in order to proceed to a fresh election.

ART. 17. The chief of the state has the right, by a secret act deposited in the archives of the senate, to point out to the people the name of the citizen whom he recommends in the interest of France to the confidence of the people and to their suffrages.

ART. 18. Until the election of the new president of the

republic, the president of the senate governs, with the co-operation of the ministers in functions, who form themselves into a council of government, and deliberate by a majority of votes.

#### CHAPTER IV.

##### *Of the Senate.*

ART. 19. The number of senators shall not exceed 150; it is fixed for the first year at 80.

ART. 20. The senate is composed: 1, of cardinals, marshals, and admirals; 2, of citizens whom the president of the republic may think proper to raise to the dignity of senators.

ART. 21. The senators are appointed for life.

ART. 22. The functions of senator are gratuitous; nevertheless, the president of the republic may grant to senators, on account of services rendered, or of their position with regard to fortune, a personal donation, which cannot exceed 30,000 francs per annum.

ART. 23. The president and the vice-presidents of the senate are named by the president of the republic, and chosen from among the senators. They are appointed for one year. The salary of the president of the senate is fixed by a decree.

ART. 24. The president of the republic convokes and prorogues the senate. He fixes the duration of its sessions by a decree. The sittings of the senate are not public.

ART. 25. The senate is the guardian of the fundamental compact and of public liberties. No law can be promulgated without being submitted to it.

ART. 26. The senate may oppose the promulgation—

1. Of laws which may be contrary to, or be an attack on, the constitution, on religion, on morals, on freedom of worship, on individual liberty, on the equality of citizens in the

eye of the law, on the inviolability of property, and on the principle of the immovability of the magistracy.

2. Of those which may compromise the defence of the territory.

ART. 27. The senate regulates by a *senatus consultum* :

1. The constitution of the colonies and of Algeria.

2. All that has not been provided for by the constitution, and which is necessary for its march.

3. The sense of the articles of the constitution which give rise to different interpretations.

ART. 28. These *senatus consulta* will be submitted to the sanction of the president of the republic, and promulgated by him.

ART. 29. The senate maintains or annuls all the acts which are referred to it as unconstitutional by the government, or denounced for the same cause by the petitions of citizens.

ART. 30. The senate may, in a report addressed to the president of the republic, lay down the bases of bills of great national interest.

ART. 31. It may also propose modifications in the constitution. If the proposition is adopted by the executive power, it must be stated by a *senatus consultum*.

ART. 32. Nevertheless, all modifications in the fundamental basis of the constitution, such as they were laid down in the proclamation of the 2d December, and adopted by the French people, shall be submitted to universal suffrage.

ART. 33. In case of the dissolution of the legislative body, and until a new convocation, the senate, on the proposition of the president of the republic, shall provide by measures of urgency for all that is necessary for the progress of the government.

## CHAPTER V.

*Of the Legislative Body.*

ART. 34. The election has for its basis the number of the population.

ART. 35. There shall be one deputy to the legislative body for every 35,000 electors.

ART. 36. The deputies are to be elected by universal suffrage, without *scrutin de liste*.

ART. 37. They will not receive any payment.

ART. 38. They are named for six years.

ART. 39. The legislative body discusses and votes bills and taxes.

ART. 40. Any amendment adopted by the committee charged to examine a bill shall be sent back without discussion to the council of state by the president of the legislative body. If the amendment is not adopted by the council of state, it cannot be submitted to the discussion of the legislative body.

ART. 41. The ordinary sessions of the legislative body last three months; its sittings are public; but, at the demand of five members, it may form itself into a secret committee.

ART. 42. The report of the sittings of the legislative body by the journals, or by any other means of publication, shall only consist in the reproduction of the minutes of the sitting, drawn up at its conclusion under the direction of the president of the legislative body.

ART. 43. The president and vice-presidents of the legislative body are named by the president of the republic for one year; they are to be chosen from among the deputies. The salary of the president of the legislative body will be fixed by a decree.

ART. 44. The ministers cannot be members of the legislative body.

ART. 45. The right of petition can only be exercised as regards the senate. No petition can be addressed to the legislative body.

ART. 46. The president of the republic convokes, adjourns, prorogues, and dissolves the legislative body. In the event of its being dissolved, the president of the republic must convoke a new one within a delay of six months.

#### CHAPTER VI.

##### *Of the Council of State.*

ART. 47. The number of councillors of state in ordinary service is from forty to fifty.

ART. 48. The councillors of state are named by the president of the republic, and may be dismissed by him.

ART. 49. The council of state is presided over by the president of the republic, and in his absence by the person whom he appoints as vice-president of the council of state.

ART. 50. The council of state is charged, under the direction of the president of the republic, to draw up bills and the regulations of public administration, and to solve the difficulties which may arise in administrative matters.

ART. 51. It supports, in the name of the government, the discussion of bills before the senate and the legislative body. The councillors of state charged to speak in the name of the government are to be named by the president of the republic.

ART. 52. The salary of each councillor of state is 25,000 francs.

ART. 53. The ministers have rank, sitting, and deliberative votes in the council of state.



## CHAPTER VII.

*Of the High Court of Justice.*

ART. 54. A high court of justice shall try, without appeal, or without recourse to cassation, all persons who may be sent before it charged with crime, *attentats*, or conspiracies against the president of the republic, and against the internal and external safety of the state. It can only be formed in virtue of a decree of the president of the republic.

ART. 55. A *senatus consultum* will determine the organization of this high court.

## CHAPTER VIII.

*General and Transitory Clauses.*

ART. 56. The provisions of the codes, laws and regulations, which are not contrary to the present constitution, remain in vigor until they shall have been legally revoked.

ART. 57. The municipal organization shall be determined by law. The mayors shall be named by the executive power, and may be chosen from those not belonging to the municipal council.

ART. 58. The present constitution will be in vigor from the day on which the great bodies of the state shall have been constituted. The decrees issued by the president of the republic, from the 2d December up to that period, shall have the force of law.

Given at the Palace of the Tuileries, this 14th day of January, 1852.

LOUIS NAPOLEON.

Sealed with the great seal.

The reader must remember that all the decrees, which were issued after the coup d'état, and before its "ratification" by the people, were considered as ratified likewise;

for instance, the still existing law by which the government transports members of secret political societies, without trial, and by authority of which many other persons deemed dangerous were transported to Cayenne. The same is to be said of the stringent law of the press according to which every paper exists at the will of the government, with regulations which may become utterly ruinous for the editor and publisher. The minute regulations of the coats and trousers of the senators and members of the legislative corps need not probably be mentioned here as organic laws; but on March 22d, 1852, appeared the following important decree :—

*Louis Napoleon, President of the French Republic :*

Considering article 4 of the constitution, and seeing that at the moment when the senate and legislative body are about to enter on their first session, it is important to regulate their relations with the president of the republic and the council of state, and to establish, according to the constitution, the organic conditions of their works, decrees :

### THIRD DIVISION.—OF THE LEGISLATIVE BODY.

#### CHAPTER I.

*Meeting of the Legislative Body, formation and organization of the bureaux, and verification of the powers.*

ART. 41. The legislative body is to meet on the day named by the decree of convocation.

ART. 42. At the opening of the first sitting the president of the legislative body, assisted by the four youngest members present, who will fill the functions of secretaries during the session, will proceed to form the assembly into seven bureaux, drawn by lot.

ART. 43. These seven bureaux, named for the whole of

the session, will each be presided over by the oldest member, the youngest performing the office of secretary.

ART. 44. They will immediately proceed to the examination of the minutes of the election of the members distributed by the president of the legislative body, appointing one or several of their members to bring up a report thereof in a public sitting.

ART. 45. The assembly examines these reports ; if the election be declared valid, the member when present immediately takes the oath prescribed by article 14 of the constitution ; if absent, at his first appearance, after which the president of the legislative body pronounces his admission, and the deputy, who has not taken the oath within fifteen days of his election, is considered as dismissed. In case of absence the oath may be taken by writing, and in this case must be addressed by the deputy to the president of the legislative body, within the delay above mentioned.

ART. 46. After the verification of the returns, and without waiting for the decision on contested or adjourned elections, the president of the legislative body shall make known to the president of the republic that the legislative body is constituted.

## CHAPTER II.

### *Presentation, Discussion, and Vote of Bills.*

ART. 47. Bills presented by the president of the republic are to be presented and read to the legislative body by councillors of state appointed for that purpose, or transmitted, by order of the president of the republic, by the minister of state to the president of the legislative body, who causes them to be read at the public sitting. These bills will be printed, distributed, and placed on the order of the day of the bureaux, which will discuss them and name

by ballot, and by a simple majority, a committee of seven members to report on them.

ART. 48. Any amendment arising from the initiative of one or more members, must be handed to the president, and be by him transmitted to the committee. No amendment can, however, be received after the report shall have been presented at the public sitting.

ART. 49. The authors of the amendment have a right to be heard before the committee.

ART. 50. If the amendment is adopted by the committee, it transmits the tenor of it to the president of the legislative body, who sends it to the council of state, and the report of the committee is suspended until the council of state has pronounced its opinion on it.

ART. 51. If the opinion of the council of state, transmitted to the committee through the president of the legislative body, is favorable, or a new wording proposed by the council of state be adopted by the committee, the text of the bill to be discussed in public sitting shall be modified conformably to the new wording adopted. If the opinion, on the contrary, is unfavorable, or if the new wording proposed by the council of state is not adopted by the committee, the amendment will be considered as not having been offered.

ART. 52. The report of the committee on the bill examined by it shall be read in a public sitting, and printed and distributed at least twenty-four hours before the discussion.

ART. 53. At the sitting fixed by the order of the day, the discussion shall open on the ensemble of the bill, and afterwards on the different articles or chapters, if it be a law on finance. There is never any occasion to deliberate on the question of deciding if the discussion of the articles is to be passed to, as they are successively put to the vote

by the president. The vote takes place by *assis et l'évé*, and if the result is doubtful, a ballot is proceeded to.

ART. 54. If any article is rejected, it is sent back to the committee for examination. Each deputy then, in the form specified in articles 48 and 49 of the present decree, presents such amendments as he pleases. Should the committee be of opinion that a new proposition ought to be made, it transmits the tenor of it to the president of the legislative body, who forwards it to the council of state. The matter is then proceeded on in conformity with articles 51, 52, and 53 of the present decree, and the public vote which then takes place is definitive.

ART. 55. After the vote on the articles, a public vote on the ensemble of the bill takes place by the absolute majority. The presence of the majority of the deputies is necessary to make the vote valid. Should less than that number be present, the vote must be recommenced. Bills of local interest are voted by *assis et l'évé*, unless the ballot be called for by ten members at least.

ART. 56. The legislative body assigns no reasons for its decisions, which are expressed in the following form : "The legislative body has adopted ;" or "The legislative body has not adopted."

ART. 57. The minute of the bill adopted by the legislative body is signed by the presidents and secretaries, and deposited in the archives. A copy of the same, similarly signed, is transmitted to the president of the republic.

### CHAPTER III.

*Messages and Proclamations addressed to the Legislative Body by the President of the Republic.*

ART. 58. These are brought up and read in open sitting by the ministers or councillors of state named for that purpose. These messages or proclamations cannot be dis-

ussed or voted upon unless they contain a proposition to that effect.

ART. 59. The proclamations of the president of the republic, adjourning, proroguing, or dissolving the legislative body, are to be read in public sitting, all other business being suspended, and the members are immediately afterwards to separate.

ART. 60. The president of the legislative body announces the opening and closing of each sitting. At the end of each sitting, after having consulted the members, he names the hour of sitting for the following day, and the order of the day, which are posted up in the assembly. This order of the day is immediately forwarded to the minister of state, the president of the legislative body being responsible for all notices and communications being duly forwarded to him.

ART. 61. No member can speak without having asked and obtained leave of the president, and then only from his place.

ART. 62. The members of the council of state appointed in the name of the government to support the discussion of the laws are not subject to the formality of speaking in their turn, but whenever they require it.

ART. 63. The member called to order for having interrupted cannot be allowed to speak. If the speaker wanders from the question, the president may call him back to it. The president cannot allow any one to speak on the call to the question. If the speaker twice called to the question in the same speech shall continue to wander from it, the president consults the assembly to ascertain whether the right of speaking shall not be interdicted to the speaker for the rest of the sitting on the same question. The decision takes place by *assis et levé* without debate.

ART. 64. The president alone calls to order the speaker

who may interrupt it. The right to speak is accorded to him who, on being called to order, submits and demands to justify himself; he alone obtains the right to speak. When a speaker has been twice called to order in the same speech, the president, after having allowed him to speak to justify himself, if he demands it, consults the assembly to know if the right of speaking shall not be interdicted to the speaker for the rest of the sitting on the same question. The decision is taken by *assis et levé* without debate.

ART. 65. All personalities and all signs of approbation or disapprobation are interdicted.

ART. 66. If a member of the legislative body disturbs order, he is called to order by name by the president; if he persists, the president orders the call to order to be inscribed in the minutes. In case of resistance, the assembly, on the proposition of the president, pronounces without debate exclusion from the house for a period which cannot exceed five days. The placarding of this decision in the department in which the member whom it concerns was elected may be ordered.

ART. 67. If the assembly becomes tumultuous, and if the president cannot calm it, he puts on his hat. If the disorder continues, he announces that he will suspend the sitting. If calm be not then re-established, he suspends the sitting during an hour, during which the deputies assemble in their respective bureaux. On the expiration of the hour the sitting is resumed; but, if the tumult recommences, the president breaks up the sitting and postpones it to the next day.

ART. 68. The demands for the order of the day, for priority, and for an appeal to the standing orders, have the preference over the principal question, and suspend the discussion of it. Orders of the day are never *motivés*. The previous question—that is to say, that there is no ground

for deliberation—is put to the vote before the principal question. It cannot be demanded on propositions made by the president of the republic.

ART. 69. The demands for secret sittings, authorized by article 14 of the constitution, are signed by the members who make them, and placed in the hands of the president, who reads them, causes them to be executed, and mentioned in the minutes.

ART. 70. When the authorization, required by article 11 of the law of the 2d February, 1852, shall be demanded, the president shall only indicate the object of the demand, and immediately refer it to the bureaux, which shall nominate a committee to examine whether there be grounds for authorizing a prosecution.

#### CHAPTER IV.

##### *Minutes.*

ART. 71. The drawing up of the minutes of the sittings is placed under the high direction of the president of the legislative body, and confided to special clerks nominated by him, and liable to dismissal by him. The minutes contain the names of the members who have spoken and the *résumé* of their opinions.

ART. 72. The minutes are signed by the president, read by one of the secretaries at the following sitting, and copied on two registers, signed also by the president.

ART. 73. The president of the legislative body regulates, by special order, the mode of communicating the minutes to the newspapers, in conformity with article 42 of the constitution.

ART. 74. Any member may, after having obtained the authorization of the assembly, cause to be printed and distributed at his own cost, the speech he may have delivered. An unauthorized printing and distribution shall be punished



by a fine of from 500f. to 5,000f. against the printers, and of from 5f. to 500f. against the distributors.

We read in the *Constitutionnel*: "It is, as already stated, at the Tuileries, in the Salle des Maréchaux, that the sitting of the senate and legislative body on the 29th will be held. The prince-president, surrounded by his aides-de-camp, his orderly officers, his ministers, and the council of state, will be placed on a raised platform; opposite the president of the republic will be, on one side the senate, and on the other the legislative body. The prince-president will deliver a speech. A form of an oath will then be read, and each member of the senate and of the legislative body, on his name being called over, will pronounce from his place the words *Je le jure!* The clergy, the magistracy, and the diplomatic body will be represented at this solemnity. A small number of places will be reserved in an upper gallery for persons receiving invitations."

## APPENDIX XIV.

REPORT OF THE FRENCH SENATORIAL COMMITTEE ON THE PETITIONS TO CHANGE THE REPUBLIC INTO AN EMPIRE, IN NOVEMBER, 1852,<sup>1</sup> AND THE SENATUS CONSULTUM ADOPTED IN CONFORMITY WITH IT.

MESSIEURS LES SENATEURS: France, attentive and excited, now demands from you a great political act—to put an end to her anxieties and to secure her future.

But this act, however serious it may be, does not meet with any of those capital difficulties which hold in suspense the wisdom of legislators. You know the wishes expressed by the councils general, the councils of arrondissement, and the addresses of the communes of France: wishes for stability in the government of Louis-Napoleon, and for return to a political form which has struck the world by the majesty of its power and by the wisdom of its laws. You have heard that immense petition of a whole people rushing on the steps of its liberator, and those enthusiastic cries, which

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<sup>1</sup> This report was read by Mr. Troplong, chairman of the committee. It is universally ascribed to him, and Mr. Troplong is now president of the senate. Whether this remarkable paper be considered as a political creed or confiteor, or as a piece of attempted logic to connect certain occurrences and account for surprising turns, or as a high state paper of singular shallowness—in whatever light it may be viewed, it will be allowed on all hands that it fully deserves preservation.

we may almost call a plebiscite by anticipation, proceeding from the hearts of thousands of agriculturists and workmen, manufacturers and tradesmen. Such manifestations simplify the task of statesmen. There are circumstances in which fatal necessities prevent the firmest legislator from acting in accordance with public opinion and with his own reason; there are others where he requires a long consideration in order to solve questions on which the country has not sufficiently decided. You, gentlemen, are not exposed either to this constraint or to this embarrassment. The national will presses and supplicates you, and your exalted experience tells you that in yielding to her entreaties you will contribute to replace France in the paths which are suitable to her interests, to her grandeur, and to the imperious necessities of her situation. All this is in fact explained by the events which take place before you.

After great political agitations, it always happens that nations throw themselves with joy into the arms of the strong man whom Providence sends to them. It was the fatigue of civil wars which made a monarch of the conqueror of Actium; it was the horror of revolutionary excesses, as much as the glory of Marengo, which raised the imperial throne. In the midst of the recent dangers of the country, this strong man showed himself on the 10th of December, 1848, and on the 2d of December, 1851, and France confided to him her standard, which was ready to perish. If she has declared her will to confide it to him forever in this memorable journey, which was only one suite of triumphs, it is because, by his courage and by his prudence, the man has shown himself equal to the task; it is because, when a nation feels herself tormented by the agitations of a stormy government, a necessary reaction leads it towards him who can best secure order, stability and repose.

Louis Napoleon, therefore, is in this wonderful situation, that he alone holds in his hands these inestimable gifts. He has, in the eyes of France, his immense services, the magic of his popularity, the souvenirs of his race, the imperishable remembrance of order, of organization, and of heroism, which make the hearts of all Frenchmen beat. He again revives in the eyes of Europe the greatest name of modern days, no more for the military triumphs for which his history is so rich, but for chaining down the political and social tempests, for endowing France with the conquests of peace, and for strengthening and fertilizing the good relations of states. Both at home and abroad it is to him that is attached a vast future of pacific labor and of civilization. That future must not be delivered to the chance of events and to the surprise of factions.

That is why France demands the monarchy of the emperor; that is to say, order in revolution, and rule in democracy. She wished it on the 10th December, when the artifices of an inimical constitution prevented the people from expressing their opinion. She wished it again on December 20, when the moderation of a noble character prevented its being demanded. But now the public sentiment overflows like a torrent; there are moments when enthusiasm has also the right of solving questions. For some time past visible signs announced what must be the mission of Louis Napoleon, and the foreseeing reason of statesmen put itself in accordance with the popular instinct in order to fix the character of it. After the bitter sarcasm which put the heir to a crown at the head of the republic, it was evident that France, still democratic from her habits, never ceased to be monarchical in her instincts, and that she wished for the re-establishment of the monarchy in the person of the prince who revealed himself to her as the conciliator of two ages and of two minds, the line of union of the government

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and of the people, the monarchical symbol of organized democracy.

At the end of the last century, the preponderance of the democratic element gave rise to a belief in speculative or ardent minds that France ought to mark the new era into which she had entered by a divorce between her government and the monarchical form. The republic was borrowed from the souvenirs of antiquity. But in France political imitations seldom succeed. Our country, although taxed with frivolity, is invincibly attached to certain national ideas and to certain traditional habits, by which it preserves the originality of which it is proud. The republic could not acclimatize itself on the French soil. It perished from its own excesses, and it only went into those excesses because it was not in the instincts of the nation. It was but an interval, brilliant abroad, and terrible at home, between two monarchies.

At that period, glory had raised to power one of those men who found dynasties and who traverse ages. It is on that new stem that France saw flourish a monarchy suitable to modern times, and which yielded to no other in its grandeur and in its power. Was it not a great lesson to see a similar fortune reserved, fifty years after, for a second trial of the republican form? Is it not a striking example of the perseverance of the French mind in things which are like the substance of her political life? Is not the proof complete and decisive?

It will be the more so, as the imperial monarchy has all the advantages of the republic, without its dangers. The other monarchical régimes (the illustrious services of which we will not depreciate) have been accused of having placed the throne too far from the people, and the republic, boasting of its popular origin, skilfully entrenched itself against them in the masses, who believed themselves to be forgotten

and overlooked. But the empire, stronger than the republic on democratic grounds, removes that objection. It was the government the most energetically supported; and the most deeply regretted by the people. It is the people who have again found it in their memory to oppose it to the dreams of ideologists, and to the attempts of perturbators. On the one hand, it is the only one which can glorify itself in the right recognized by the old monarchy, "that it is to the French nation that it belongs to choose its king;" on the other, it is the only one which has not had quarrels to settle with the people. When it disappeared in 1814, it was not by a struggle of the nation against its government. The chances of an unequal foreign war brought about that violent divorce. But the people have never ceased to see in the empire its emanation and its work; and they placed it in their affections far above the republic—an anonymous and tumultuous government, which they remember much more by the violence of its proconsuls than by the victories which were the price of French valor.

That is why the Napoleonic monarchy absorbed the republic a first time, and must absorb it a second time. The republic is virtually in the empire, on account of the contract-like character of the institution, and of the communication and express delegation of power by the people. But the empire is superior to the republic, because it is also the monarchy; that is to say, the government of all confided to the moderating action of one, with hereditary succession as a condition, and stability as its consequence. Monarchy has the excellent quality of yielding admirably to all the progress of civilization: by turns feudal, absolutist and mixed; always old and always modern, it only remains to it to reopen the era of its democratic transformation, which was inaugurated by the emperor. That is what France now wishes; it is what is asked of you by a country fatigued

with utopian ideas, incredulous with respect to political abstractions, and whose genius, a union of sound sense and poesy, is so constituted that it only believes in power under the figure of a hero or a prince.

Even if the love of Frenchmen for monarchy be only a prejudice, it must be respected; a people can only be governed in accordance with its ideas. But it must in particular be respected, because it is inspired by the most essential wants and the most legitimate interests of the country.

France is a great state which wishes to preserve at home and abroad the force which a vast territory and thirty-five millions of inhabitants give. She is both agricultural and commercial. Notwithstanding the fertility of her soil, she would be poor if manufactures were not to add immense personal to real capital, and if the taste for polite enjoyments and moderate luxury did not give to labor an aliment always new. But labor, in order to arrive at the result of its enterprises, should be seconded by so many advances of funds, and such a persevering continuance of efforts, that all success would escape it if it were interrupted or troubled by the storms of disquieting and subversive policy. It demands, therefore, stability of institutions, as the source of confidence and the mother of credit.

All these conditions of a regular and prosperous life the monarchy procures to France; any other form can only compromise them.

Monarchy is the government of great states, to which institutions made for duration are marvellously suitable, as the most solid foundations are required for a vast edifice. The republic, on the contrary, is only the government of small states, if we except the United States of America, which, by their geographical position, form an exception to all rules, and which, besides, are only a federation; a re-

public has never been able to establish itself except in small nations, in which the embarrassments of that difficult and complicated form of government are corrected by the small extent of territory and population.

Ancient Rome, so far from contradicting this rule, fully confirms it. The republic was only in the city and for the city. Beyond it there were only avaricious masters and oppressed subjects. If ever France can be said to have had a sort of neighborhood with the republic, it was in the middle ages, when the republican spirit, extinguished from the time of the Cæsars, had become awakened in a part of Europe; when France was only a chess-board of almost independent provinces; and when the feudal principalities were in all parts menaced by the communal movement. But since that movement all the interior action of France has removed her from the republican form. She, in particular, separated from it, when she gave herself a united territory and thirty-five millions of inhabitants living under the same laws, in the same country, and united by an infinite chain of dependent interests, which the same movement of circulation causes to terminate in a sole centre. Such a people is not to be shaken, as were the citizens of a single city, even if called Athens or Rome. A country which lives by its labor, and not by the labor of slaves and presents from the state, cannot be occupied with speeches of the forum, with the permanent agitation of comitia, with the anxieties of politics always in ebullition. This fever, to which democratic republics give the name of political life, cannot with impunity be communicated to a nation whose splendor particularly consists in the pacific development of its wealth, and in the regular and intelligent activity of its private interests.

Our fathers learned these truths in the rude school of public and private misfortunes. They compose all the in-



terior policy of the commencement of this century.<sup>2</sup> Why should incorrigible innovators have in these latter times inflicted the too palpable demonstration of them upon us? We have seen altars raised to instability and to periodical convulsions—the two plagues of the social body; we have seen laws made to reduce to solemn precepts the febrile and terrible crisis which may ruin a people; we have seen the vessel of the state launched on an unknown sea, without a fixed point to guide itself by, without an anchor to cast out, and no one can say what would have become of the future of France, if Providence, watching over her, had not raised up the man of intrepid heart who extended his hand to her.

France, with full knowledge of what she is doing, intends to return to her natural state; she longs to again find her real position and to resume her equilibrium. The French people, in its admirable common sense, is not so infatuated with its superior qualities that it is not aware of its weak points. It feels itself variable in its impressions, prompt to be worked on, and easy to be led away. And because it distrusts the rapidity of a first movement, it seeks a fixed point in its institutions, and desires to be retained on a stable and solid basis. The French democracy has sometimes been compared to that of Athens. We have no objection to the comparison as far as politeness and elegance of mind are concerned, but we in all other respects utterly disclaim the similitude. The Greek democracies were nothing but a perpetual flux and reflux, never accepting the corrective of their levity. They were, besides, idle and grasping, living on the civic oboli and distributions of food. On the other hand, the French democracy, of a more

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<sup>2</sup> See the speeches delivered in the Tribunal on the return to monarchy in 1804.

masculine and more haughty character, does not look to the state for the care of its well-being; it depends on its own efforts for support, and most joyfully submits to the eternal law of God—daily labor. Its speculations comprise the whole world; it cultivates the earth with its free hands; it furrows the mighty deep with its vessels; it multiplies its industrial creations, engenders capital, and renders the future tributary to its able and immense combinations. When a nation thus founds its enterprises on credit and durability, when sometimes not less than half a century is necessary to it to reap the benefit of its operations, it is not the institutions of a day that can give it any hope of their success. It would be senseless if it did not desire to make the moving sphere of its interests turn round the motionless axis of a monarchy.

It is true that in France equality is an object of absolute worship, and a monarchy has, as its very first condition, the privileged existence of these grand and rare individualities which God raises above their fellows to form dynasties, and which are less human beings than the personification of a people and the concentrated radiation of a civilization. But equality, such as we conceive it in France, admits without jealousy those providential grandeurs, rendered legitimate by state reasons, below which it finds its level. At Rome and Athens equality consisted in rendering each citizen admissible to the supreme authority; and it is therefore that men considered all equality at an end when Augustus had converted the republic into a monarchy.<sup>3</sup> In France we considered it as saved and confirmed forever, under the reign of the emperor. The reason is, that in this country of equality there is nothing that is less supported than the

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<sup>3</sup> Tacitus: "Omnēs, exutā equalitate, jussu principis adspettare."  
—*Annal.* I. 4.

government of one's equals ; because equality is there fully satisfied in holding everything in its grasp, places, credit, wealth, and renown, and in having a wide and open road before it to arrive at everything except that extreme point of power, that inaccessible summit, which the care of the public tranquillity has placed high above all private competition. By that the democracy wonderfully agrees with the monarchy, and that union is so much the more solid that common sense unites with the habits of the people in cementing it.

But should cavilling minds, believing themselves more wise than the whole country, bring forward as an objection to the desire expressed for the hereditary empire, the inconveniences which minorities and bad princes may, at certain intervals, produce in monarchical states, we would reply that all human institutions contain within themselves certain defects and weaknesses. The monarchy has not the privilege of perfection ; it has simply, for France, the merit of an incontestable superiority over the system of perpetual election, which only offers an eternal series of struggles and hazards, and which solves one difficulty only for the purpose of immediately leaving another in suspense.

Some ancient states, believing that they were improving on the monarchical system, had placed in sovereign and immovable assemblies that element of stability which dynasties represent. But have not such assemblies also had their moments of weakness ? Does not their history exhibit melancholy instances of venality or tyranny ? Has not their baseness given them insolent and seditious guardians ? And in the point of view of moral responsibility, which is one of the great checks on the conscience, there is not the slightest comparison between a man and an assembly. In assemblies, the responsibility of the body effaces that of the individuals ; and as a collective responsibility is very nearly illusory, it

comes to pass that that irresponsibility, which sometimes constitutes the force and independence of assemblies, is also the cause of their excesses. In a prince, on the contrary, the responsibility is undivided and inevitable, and presses with all its weight on the side of duty. In fine, when evil creeps into a sovereign political body, it continues there as a precedent, increases as a tradition, and the thing itself can only be kept up by keeping up the evil. On the contrary, if evil glides to the throne, it causes alarm only by temporary and intermittent perils, which are, besides, extenuated by the institutions and the modifications which are more easily effected in the case of a man than in that of an assembly. The feeble Louis XIII. was followed by the grand Louis XIV.; and, besides, Louis XIII. is, in the eyes of posterity, covered by his minister, Richelieu.

The general considerations appear to us to prove sufficiently that the national sentiment which addresses itself to you, gentlemen, as to sage mediators between the people and the prince, is neither a frivolous caprice nor a fleeting infatuation. Behind the fascination of a great name, and above the gratitude which is felt for the acts of a noble and patriotic courage, there are grand thoughts, powerful interests, and an admirable intuitive perception of the public wants. France, gentlemen, desires to have the life of a great nation, and not that precarious and sickly existence which wastes away the social body. During the last four years, whilst subjected to perilous experiments, she has known how to correct by her good sense the evils of a deplorable situation. But it is necessary that such a situation should be brought to a close. Up to the present time, she had been able to find, in the midst of the tempests which assailed her, only transitory gleams of safety, on which no future prosperity could possibly be based. At present, she is about to enter the port, to found, by means of the fortu-

nate pilot whom she greets with joy, the edifice of her prosperity on the solid ground of monarchy.

Let us now look to the details of the draft of the *senatus consultum*.

Louis Napoleon will take the name of Napoleon III. It is that name which re-echoed in the acclamations of the people; it is the name which was inscribed on the triumphal arches and trophies. We do not specially select it; we merely accept it from a natural and spontaneous election. It has besides that profound good sense which is always to be met with in the wonderful instincts of the people. It is a homage to Napoleon I., whom the people never forgets; and it is a pious remembrance for his youthful son, who was constitutionally proclaimed emperor of the French, and whose reign, short as it was, has not been effaced by the obscure existence of the exile. It solves for the future the question of succession, and signifies that the empire will be hereditary after Louis Napoleon, as it has been for himself. In fine, it connects the political phase to which we owe our safety with the glorious name which was also the safety of past times.

And yet, by the side of the traditional element, contemporary events preserve their proper value and their peculiar signification. If Louis Napoleon is called on at present to resume the work of his uncle, it is not merely because he is the heir of the emperor, but because he deserves to be so; it is on account of his devotedness to France, and of that spontaneous and personal action which has rescued the country from the horrors of anarchy. It is not sufficient for him to be the heir of the emperor; he must be again elected, for the third time, by the people. Thus the succession and the election will be in accord to double his force, the modern fact rendering the old one young and vigorous

by the puissance of a reiterated consent and a second contract.

The *senatus consultum* next invests Louis Napoleon with the right to adopt an heir, in default of a direct successor. Adoption, which is a common right in private families, cannot be an exception in dynastic families; for, when no natural heir exists, it is a principle in public law that the choice of the monarch belongs to the people. But that rule is that of ordinary times, and cannot suit in an absolute manner an order of things which again resumes a new course after a long interruption, and in the midst of the most extraordinary circumstances.

Louis Napoleon, the depository of the confidence of the people, charged by it to draw up a constitution, can, on infinitely stronger grounds, receive the mandate to provide for certain eventualities, and to prevent certain crises in which that constitution might perish. The strokes of nature have been often terrible in reigning families, and have set at naught the counsels of wisdom. The French people will not imagine that it makes too great a sacrifice of its rights in abandoning itself once more to the prudence of the prince whom it has made the arbiter of its destinies. This provision, besides, is borrowed from the imperial constitution. The empire which revives ought not to be less powerful in its means than was the empire at its commencement. And, in order to remain within the letter and the spirit of that precedent, the *senatus consultum* proposes to you not to admit of such adoption, except for the male descendants, natural and legitimate, of the brothers of Napoleon I. The right of unlimited adoption would be in manifest contradiction with the popular wish for the re-establishment of the empire, which is the guiding-star of our deliberations. In fact, the empire is inseparable from the name of Bonaparte; and cannot be conceived without a member of that family with which the

new form of the monarchy was stipulated in France. Everything ought to remain consistent in the work which we are considering.

But above that combination, solely of a political character, France places a hope which more than anything constitutes her faith in the future; and that is, that, at no distant period, a wife will take her place on the throne which is about to be raised, and will give to the emperor scions worthy of his great name and of this great country. That debt was imposed on the prince on the day when the cries of "Vive l'Empereur" hailed him on his passage; and he will accept it virtually but necessarily the day when the crown will be placed on his head. For, since the empire is established with a view to the future, it ought to carry with it all the legitimate consequences which preserve that future from uncertainty and shocks.

In default of the direct line and of the adoptive line, the case of succession in the collateral line must be provided for. On that point we propose to you a clause, by which the people should confer on Louis Napoleon the right of regulating by an organic decree that order of succession in the Bonaparte family. By that means, our senatus consultum will remain more perfectly in accord with the popular wish, which in its unlimited confidence has placed in Louis Napoleon's hands the destinies of the country; it will likewise be more in conformity with the political changes which France has entered into since 2d December. The greatest political genius of Italy, in the sixteenth century, was accustomed to say, in those rare and solemn moments in which the question is to found a new state, that the will of a single man was indispensable. (1.) That is what the nation comprehended so admirably when it remitted to Louis Napoleon the task of drawing up the constitution which governs us. At present, that a capital modification is taking place in

one of the very foundations of that constitution, it appears natural and logical to again confer on Louis Napoleon a portion of the constituent power, in order that, in the special point which concerns most intimately the interests of the dynasty of which the nation declares him the head, he may fix on such provisions as appear to him best appropriated to the public interest and the interest of the monarch. For his family, as well as for the country, Louis Napoleon is the man of an exceptional situation, and no fear must be entertained of adding to his power, in order that, with the assent of all, he may settle it by the authority of a single person. We, therefore, propose to you, after a conference with the organs of the government, which has led to unanimity of opinion, an article thus worded: "Art. 4. Louis Napoleon Bonaparte regulates, by an organic decree addressed to the senate and deposited in the archives, the order of succession to the throne in the Bonaparte family, in case he should not leave any direct or adopted heir."

It is not necessary for us to say to you that in this system the formula to be submitted to the French people ought to contain an express mention of that delegation. It will be necessary, according to the constitution, that the French people be called on to declare whether it desires or not to invest Louis Napoleon with the power which we conceive ought to be conferred on him.

After having thus spoken of the succession to the imperial crown, the *senatus consultum* carries the attention to the condition of the family of the emperor. It divides it into two parts: 1, the imperial family, properly so called; composed of the persons who may by possibility be called to the throne, and of their descendants of both sexes; and, 2, of the other members of the Bonaparte family.

The situation of the princes and princesses of the imperial family is to be regulated by *senatus consulta*; and they



cannot marry without the emperor's consent. Art. 6 pronounces for any infraction of this regulation of public interest the penalty of losing all right to the succession, with the proviso, however, that in case of the dissolution of the marriage by the death of the wife, without issue, the right is at once recovered.

As to the other members of the Bonaparte family, who compose the civil family, it is to the emperor, and not any longer to *senatus consulta*, that it appertains to fix by statutes their titles and situation. It is useless to insist on this distinction, as it is explained by the difference which exists between the civil family and that uniting in itself the double character of civil family and political family.

We have also to request your special attention to the final paragraph of article six, which confers on the emperor full and entire authority over all the members of his family. These special powers are called for by the gravest considerations, and belong to the right generally instituted for reigning families. Princes are placed in so elevated a position by public right and national interest, that they are, in many respects, out of the pale of the common law. The greater their privileges are, the more their duties are immense towards the country. Montesquieu has said: "It is not for the reigning family that the order of succession is established, but because it is for the interest of the state that there should be a reigning family." They belong, therefore, to the state by stricter ties than other citizens, and on account even of their very greatness must be retained in a sort of perpetual ward-~~dom~~, under the guardianship of the emperor, the defender of their dignity, the appreciator of their actions, and serving to them as father as much as guardian, in order to preserve to the nation this patrimony in fact.

If these reasons do not apply in all their extent to the

members of the private family, there are others of not less importance, which are drawn from the conjoint responsibility imposed by a name which is the property of the nation, as much as of the persons who have the honor of bearing it.

Besides, several of these persons have the privilege of being the only ones in the state that the emperor can place by adoption in the rank of the persons who may succeed to the crown. But there is no public privilege which ought not to be paid for by duties specially created to justify its necessity, and to co-operate in the object of its establishment.

There is another point which it is sufficient for us to remind you of—the maintenance of the Salic law in the imperial dynasty. In France, the Salic law is, so to speak, incorporated with the monarchy, and, although its origin goes back to the remotest periods, it has so completely penetrated into our way of thinking, and is so completely in accord with the rules of French policy, that it is inseparable from all transformations in the monarchical principle.

Finally, gentlemen, the *senatus-consultum* provides for the case in which the throne should be vacant; “if ever the nation should be so unfortunate as to experience this affliction,” (to use the language of the celebrated edict of July, 1717,) “it would be for the nation itself to repair it.” Article 5 formally recognizes this fundamental, essential, and inalienable right. At the same time it provides for the means of preparing a choice worthy of the French people, by its prudence and maturity. In consequence, an organic *senatus consultum*, proposed to the senate by the ministers formed into a council of government, with the addition of the president of the senate, the president of the

legislative body, and the president of the council of state, shall be submitted to the free acceptance of the people, and will give to France a new emperor.

Such, gentlemen, are the principal provisions of the *senatus consultum*, now submitted to you for consideration, and which will prepare the august contract of the nation with its chief. Should you adopt it, you will order by a concluding article, in virtue of the constitution, that the people be consulted concerning the re-establishment of the imperial dignity in the person of Louis Napoleon, with the succession of which we have just explained to you the combinations. But, gentlemen, we may affirm, whilst bending at present before a public will which only asks for an occasion to burst forth afresh, that the empire is accomplished. And that empire, the dawn of which has lighted up the path of Louis Napoleon in the departments of the south, rises over France, surrounded by the most auspicious auguries. Everywhere hope revives in men's minds; everywhere capital, restrained by the uncertainty of the future, rushes with ardor into the channels of business; and everywhere the national sap circulates, and vivifies to produce the most abundant fruits.

This reign, gentlemen, will not be cradled in the midst of arms, and in the camp of insurgent prætorian guards. It is the work of the national feeling, most spontaneously expressed; it has been produced in our commercial towns, in our ports, in the most peaceful centres of agriculture and manufactures, and in the midst of the joy of an affectionate people; it will consequently be the *Empire of Peace*—that is to say, the revolution of '89, without its revolutionary ideas, religion without intolerance, equality without the follies of equality, love for the people without socialist charlatanism, and national honor without the ca-

lamities of war. Ah! if the great shade of the emperor should cast a glance at this France which he loved so much, it would thrill with joy at beholding the gloomy predictions of St. Helena, at one moment so near being realized, totally disproved. No; Europe will not be delivered up to disorder and anarchy! No; France will not lose the grandeur of her institutions, and it is the ideas of Napoleon directed towards peace by a generous-minded prince, which will be the safeguard of civilization.

## SENATUS CONSULTUM.

In the month of November, 1852, the senate adopted the following senatus consultum :

## SENATUS CONSULTUM.

*Proposition to modify the Constitution, in conformity with Articles 31 and 32.*

ART. 1. The imperial dignity is re-established. Louis Napoleon Bonaparte is emperor, under the name of Napoleon III.

ART. 2. The imperial dignity is hereditary in the direct and legitimate issue of Louis Napoleon Bonaparte, from male to male in the order of primogeniture, and with perpetual exclusion of women and their descendants.

ART. 3. Louis Napoleon Bonaparte, in default of a male child, may adopt the children and legitimate descendants in the male line of the brothers of Napoleon I.

The forms of adoption shall be regulated by a senatus consultum.

If, after the adoption, male children of Louis Napoleon shall be born, his adoptive sons cannot succeed him, except after his own legitimate descendants.

The successors of Louis Napoleon, and their descendants, cannot adopt.

ART. 4. Louis Napoleon regulates, by an organic decree addressed to the senate and deposited in its archives, the order of succession on the throne in the Bonaparte family, in case he should not leave any direct legitimate or adopted heir.

ART. 5. In default of any legitimate or adoptive heir of Louis Napoleon Bonaparte, and of successors in collateral line who may derive their right from the organic decree above mentioned, a *senatus consultum*, proposed to the senate by the ministers, formed into a council of government, with the addition of the actual presidents of the senate, the legislative corps, and of the council of state, and submitted for adoption to the people, appoints the emperor, and regulates in his family the hereditary order from male to male, to the perpetual exclusion of women and their descendants.

Until the election of the new emperor shall be consummated, the affairs of the state are governed by the actual ministers, who shall form themselves into a council of government and deliberate by a majority of votes.

ART. 6. The members of the family of Louis Napoleon eventually called to succeed him, and their descendants of both sexes, form a part of the imperial family. A *senatus consultum* regulates their position. They cannot marry without the authorization of the emperor. Their marriage without this authorization deprives of the right of inheritance as well him who contracts the marriage as his descendants.

Nevertheless, if there are no children of such a marriage, and the wife dies, the prince having contracted such marriage recovers his right of inheritance.

Louis Napoleon fixes the titles and the condition of the other members of his family.

The emperor has plenary authority over all the members of his family. He regulates their duties and their obligations by statutes which have the force of laws.

ART. 7. The constitution of the 15th of January, 1852, is maintained in all those dispositions which are not contrary to the present *senatus consultum*; it cannot be modified except in the forms and by the means there prescribed.

ART. 8. The following proposition shall be presented for the acceptance of the people in the forms determined by the decrees of the 2d and 4th of December, 1851 :

"The people wills the re-establishment of the imperial dignity in the person of Louis Napoleon Bonaparte, with inheritance in direct legitimate or adoptive descendants, and gives him the right to regulate the order of succession to the throne in the Bonaparte family in the manner described in the *senatus consultum* of the 7th of November, 1852."

The senate adopted this *senatus consultum* by eighty-six votes of eighty-seven senators.

More than eight millions of people voted *yes*, according to the official publications.

"All Frenchmen of the age of twenty-one, in possession of their civil and political rights," were called upon to vote by a decree of some length, of November 7th, 1852.

The paper on elections, the first of this appendix, contains the details of this and other votes, as well as the view of the author regarding them.

In addition to the papers here given, it ought to be remembered that the senate can decree organic laws, and thus a *senatus consultum* has been passed, according to which the legislative corps (already so denuded of power and influence) is deprived of the right to vote on the single items of the budget. It must adopt or reject the budgets of each ministry as a whole. This means, of course, that it must adopt

the whole—for government would necessarily be brought to a stop if the entire budget of a ministry were rejected ; and the executive government would simply order again the soldiery to clear the legislative hall, assume the dictatorial power, and make the people rectify the coup.

## APPENDIX XV.

LETTER OF THE FRENCH MINISTER OF THE INTERIOR,  
MR. DE MORNAY, ADDRESSED TO THE PREFECTS OF  
THE DEPARTMENTS IN THE YEAR 1852.

THE minister of the interior addressed the following circular to the prefects of the departments :

" MONSIEUR LE PREFET: You will shortly have to proceed to the elections of the legislative body. It is a grave operation, which will be either a corollary or a contradiction of the vote of the 20th December, according to the employment which you make of your legitimate influence. Bear well in mind that universal suffrage is a new and unknown element, easy for a glorious name to make the conquest of, unique in history, representing in the eyes of the populations authority and power, but very difficult to fix on secondary individualities; consequently, it is not by following former errors that you will succeed. I desire to inform you of the views of the head of the state. You perceive that the constitution has aimed at avoiding all the theatrical and dramatic part of the assemblies, by interdicting the publication of the speeches delivered; in that way the members of those assemblies, not being occupied with the effect which their words in the tribune are to produce, will think more of carrying on seriously the affairs of their country. The electoral law will pronounce on the incompatibilities. The situation of public functionaries in a political assembly is



always a very delicate matter, as in voting with the government they lower their proper character, and in voting against it they weaken the principle of authority. The exclusion of functionaries, and the suppression of all indemnity, must necessarily limit, in a country where fortunes are so divided as in ours, the number of men who will be willing and able to fulfil such duties. Nevertheless, as the government is firmly decided never to make use of corruption, direct or indirect, and to respect the conscience of every man, the best means of preserving to the legislative body the confidence of the populations is to call to it men perfectly independent by their situation and character. When a man has made his fortune by labor, manufactures, or agriculture, if he has been occupied in improving the position of his workmen, if he has rendered himself popular by a noble use of his property, he is preferable to what is conventionally called a political man, for he will bring to the preparation of the laws a practical mind, and will second the government in its work of pacification and re-edification. As soon as you shall have intimated to me, in the conditions indicated above, the candidates who shall appear to you to have the most chance of obtaining a majority of votes, the government will not hesitate to recommend them openly to the choice of the electors. Hitherto, it has been the custom in France to form electoral committees and meetings of delegates. That system was very useful when the vote took place *au scrutin de liste*. The *scrutin de liste* created such confusion, and such a necessity for coming to an understanding, that the action of a committee was indispensable; but now these kind of meetings would be attended with no advantage, since the election will only bear on one name; it would only have the inconvenience of creating premature bonds, and appearances of acquired rights which would only embarrass the people, and deprive them of all liberty. You

will, therefore, dissuade the partisans of the government from organizing electoral committees. Formerly, when the suffrage was restricted, when the electoral influence was divided among a few families, the abuse of this influence was most shameful. A few crosses, little merited, and a few places, could always secure the success of an election in a small college. It was very natural that this abuse should cause great dissatisfaction, and that the government should be called on to abstain from any ostensible interference. Its action and its preferences were then occult, and for that very reason compromised its dignity and its authority. But by what favors could the government be now supposed capable of influencing the immense body of the electors? By places? The whole government of France has not establishments vast enough to contain the population of one canton. By money? Without speaking of the honorable susceptibilities of the electors, the whole public treasury would not be sufficient for such a purpose. You will remember to what the result of the efforts of the government was reduced on the 10th December, 1848, in favor of the candidate to the presidency who was then in power. With universal suffrage there is but one powerful spring, which no human hand can restrain or turn from the current in which it is directed, and that is public opinion; that imperceptible and indefinable sentiment which abandons or accompanies governments, without their being able to account for it, but which is rarely wrong in doing so; nothing escapes it, nothing is indifferent to it; it appreciates not only acts, but divines tendencies; it forgets nothing, it pardons nothing, because it has, and can have, but one moving power—the self-interest of each; it is alive to all, from the great policy which emanates from the chief of the state to the most trivial proceedings of the local authorities, and the political opinion of a department depends more than is gene-

rally believed on the spirit and conduct of its administration. For a long time past the local administrations have been subordinate to parliamentary exigencies; they occupied themselves more in pleasing some influential men in Paris than in satisfying the legitimate interests of the communes and the people. These days are happily, it may be said, at an end. Make all functionaries thoroughly understand that they must carefully occupy themselves with the interests of all, and that he who must be treated with the greatest zeal and kindness is the humblest and the weakest. The best of policies is that of kindness to persons, and facility for interests—and that functionaries shall not suppose themselves created for purposes of objection, embarrassment, and delay, when they are so for the sake of dispatch and regularity. If I attach so much importance to these details, it is because I have remarked that inferior agents often believe that they increase their importance by difficulties and embarrassments. They do not know what maledictions and unpopularity they bring down on the central government. This administrative spirit must be inflexibly modified; that depends on you; enter firmly on that path. Be assured that then, instead of seeing enemies in the government and local administration, the people will only consider them a support and help. And when afterwards you, in the name of this loyal and paternal government, recommend a candidate to the choice of the electors, they will listen to your voice and follow your counsel. All the old accusations of oppositions will fall before this new and simple line of policy, and people in France will end by understanding that order, labor, and security can only be established in a durable manner in a country under a government listened to and respected.

“Accept, &c.

“A. DE MORNAY.”

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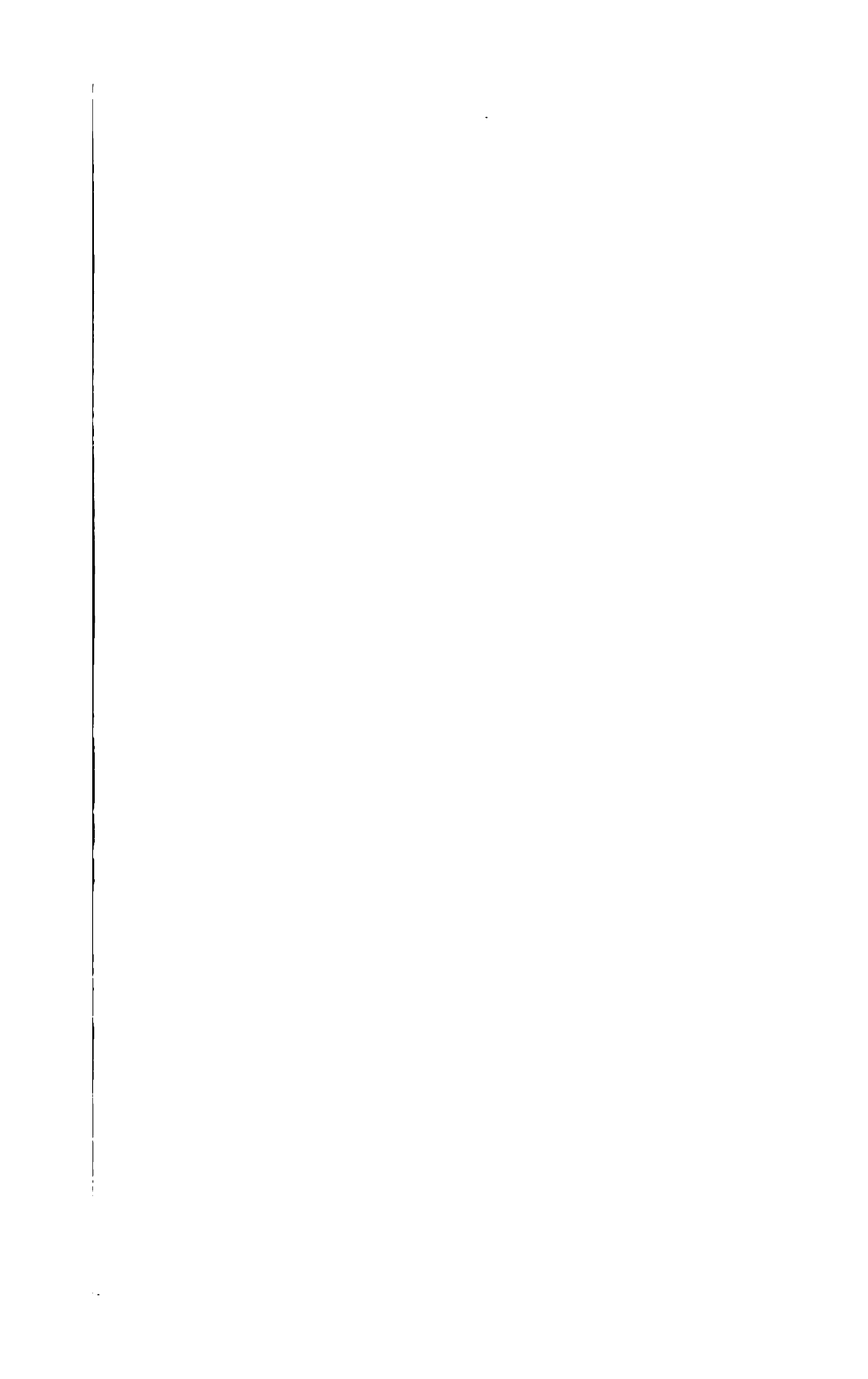
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